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Current Topics.

Additional Metropolitan Magistrates.

THE DEPUTATION of The Law Society to request the Home Secretary to appoint additional magistrates in London (see p. 226, *ante*) voiced a real grievance. There is undoubtedly undue protraction of preliminary proceedings in lengthy indictable cases. Some of the adjournments are due to the prosecution not being ready, and others to the defence "playing for time," but when all allowance is made, there is avoidable delay in the police courts in London; avoidable, that is, if the courts were adequately staffed. Work of great variety and extent has been piled on to these maids of all work. Some courts are "snowed under" by innumerable summonses for trifling offences under the traffic laws; others occupy hours in settling matrimonial disputes and making adoption orders of children. There are two possible remedies, the appointment of additional magistrates, and the giving of additional duties to lay justices. There are at present twenty-five metropolitan magistrates. As long ago as 1840 Parliament authorised the appointment of a number not more than twenty-seven (3 & 4 Vict., c. 84, s. 2), and there seems no good reason why the power then given should not be exercised nearly a century later when the business of the courts has developed out of all proportion to what it was then. As to the alternative of taking business to the lay justices, it is public knowledge that these ladies and gentlemen would welcome the opportunity of extended service. The obstacle is s. 42 of the Metropolitan Police Courts Act, 1839, which prohibits the taking of fees by their clerks. But there is an Administration of Justice Bill now before Parliament, and the repeal of this section could be therein provided for.

"Third Degree" in England.

THERE HAS been a good deal of comment of late upon alleged pressure by police officers to extract information from suspected persons and others. The latest statement is that the widow of a man, whose death is the subject of police enquiry, was interrogated continuously for thirteen hours. In reply to a question in Parliament, an enquiry into this statement has been promised. It is not advisable to take all press statements of a sensational nature at their face value. The occasion does, however, present an opportunity for briefly commenting upon the legal position of a person detained and interrogated by the police. At the outset we may point out that "detention" by police officers, as something distinct from arrest, is, broadly speaking, unknown to the English law. Of course, no serious consequences will ever be incurred by a policeman who detains a man on suspicion for a time, and then, upon finding his suspicions unjustified, releases him, either upon his own initiative or upon the instructions of a superior. But the case must be one where arrest would be justified if the facts were as suspected, and the suspicion must be reasonable. An Englishman is not to be held in custody on light grounds. As to questioning, a police officer is entitled to put questions to persons he supposes to have knowledge of the facts of a crime, even if he suspect one or more of such persons of the crime itself. The persons questioned cannot be compelled to answer; but only bad citizens, or persons conscious of guilt will obstruct the course of justice by a refusal. Directly a policeman has made up his mind to charge a person with a specific offence, he may no longer question him. On the contrary, he is supposed to administer a caution warranted to close his prisoner's mouth. The inventor of this caution is lost in the mists of the past. It seems foolish to stop a man from telling his story. Guilty or not, justice is not served by his silence. The golden rule was laid down by some of the more robust judges of the past, a rule fair to the prisoner and to the public—a policeman should keep his ears open and his mouth shut. But the caution is there, and has the unfortunate reaction of making police officers anxious to extract all the information they can from a suspect before they administer the caution, and to delay the caution till the latest possible moment. There are indications that the process of interrogation is being abused. The only check upon it is the power of the trial judge to refuse to admit confessions made by accused persons if he is satisfied that they have been extracted by a modified species of torture, such as prolonged questioning when weary and faint for want of food and sleep. Statements so obtained cannot be excluded by the law of evidence as confessions extorted by promise or threat, although it may be argued there is an implied promise of relief if the desired answers are forthcoming, and an implied threat of further trouble if they are not. But the judges have discretion to deal with the matter if they choose to do so. Confessions are no longer obtained by promises and threats, for the good reason that they are useless when obtained. If confessions obtained by "third degree" methods were useless there should be no temptation to use third degree. So far as witnesses are concerned, the remedy is in their own hands: refusal to be worn out by prolonged questioning, and if detained against their will, an action for false imprisonment.

Borough Council as Publican.

AN UNUSUAL application was made at the last adjourned Licensing Sessions for the Borough of Tamworth, viz., for a provisional order sanctioning the grant to the Mayor, Aldermen and Burgesses of a justices' licence authorising them to apply for and hold an excise licence to sell beer by retail for consumption off the premises—at a shop and house to be erected. The last circumstance caused the magistrates' clerk to point out that under the Licensing (Consolidation) Act, 1910, s. 33, a provisional grant with respect to premises about to be constructed can only be made in respect of "on" licences. The licensing bench, and no other bench, had power to grant a provisional "off" licence, but the premises in that case must be in existence before the licence could be granted. The town clerk therefore applied for the withdrawal of the notice and application, and the chairman of the bench concurred. It was thereupon stated, on behalf of certain burgesses, that

they felt most strongly on general principles that it was no part of the corporation's duty to hold any "on" or "off" licences, and that any future application would be opposed for those reasons apart from the question of temperance. The incident affords an interesting example of modern extensions of municipal enterprise, the example in the above direction having been set by the Government enterprise at Carlisle.

Departmental Delay.

AN APPLICATION was made before the Railway Canal Commission on Thursday, the 15th ult., by The Shrubbery Colliery Co., Limited, who sought permission to carry two "fast" roads from their existing colliery at West Bromwich under certain areas in West Bromwich to enable them to search for coal in another district. Mr. Justice SALTER presided for the first time on this Commission, with him being Sir TINDAL ATKINSON, K.C., and Sir LEWIS COWARD, K.C. During the hearing counsel referred to a delay on the part of the Ministry of Mines, when papers were retained from the 3rd February to the 9th March. Mr. Justice SALTER said that it was not the business of the Commission to listen to complaints about a Government department; it was their business to work in friendly co-operation with the Ministry of Mines. He thought that a complaint of the nature suggested should be made to the head of the department concerned, and ultimately, if necessary, to the Prime Minister. No doubt certain inquiries had had to be made by the Board of Trade. Sir TINDAL ATKINSON added that so far as any delay was concerned, it had nothing to do with the Commission: they had no jurisdiction until the matter came before them. Counsel representing the West Bromwich Corporation drew the attention of the tribunal to s. 10, sub-s. 2, of the Mines (Working Facilities and Support) Act, 1923, which states that "The Board of Trade and any other Government Department shall give to the Commission such assistance as the Commission may require for the purposes of their duties under this Part of this Act, and shall be entitled to appear and be heard at any proceedings on an application before the Commission under this Part of this Act." Counsel submitted that if the Board of Trade were to be criticised, they ought, under the Act, to be allowed to appear to offer their explanation.

Motor Cars and Morals.

EVERY NEW development of human power is turned to unexpected ends. The motor car has come to facilitate transport, and to open up the world's beauty spots to vast numbers of people. Some ill consequences have inevitably followed. Disfigurement of the country by blatant advertisements, ugly petrol stations, ribbon building, and the scattering of litter are some. To these must be added now the practice indulged in by men of loose habits of picking up women in the towns and taking them into the country outside for immoral purposes. While some decency is observed by the selection of really secluded spots for immoral commerce, society is perhaps not entitled to interfere, and will certainly find interference both exceedingly difficult and itself likely to have inconvenient reactions. But complaints come from all over the country that public decency is not always observed; and persons using the public highways have obscene sights thrust upon their attention. The law is in a confused and unsatisfactory state. There is no clear provision of the law, and none which can be applied without the cumbrous machinery of indictment. Some entertain doubts whether a private car on a public road is itself sufficiently public to come within the law as to indecent exposure. The Street Offences Committee has had evidence upon the matter, and may, in due course, make some recommendation. But time may not be found for legislation. The evil could meanwhile be largely met by county bye-laws for good rule and government on the model of one made by the London County Council quite a long time ago.

Estoppel in Matrimonial Causes.

A CURIOUS situation appears to have arisen as a result of the decision of Mr. Justice HILL in *Woodland* v. *Woodland and Belin*. In this case a husband petitioned for nullity on the ground that at the time of his marriage to the respondent, the respondent was already married to a third person. It appeared, however, that previous to this petition the wife had presented a petition for restitution of conjugal rights, to which the husband had entered an appearance but filed no defence, and eventually obtained a decree for restitution. On the trial of the subsequent petition presented by the husband Mr. Justice HILL, notwithstanding that he was of opinion that at the time of the marriage the respondent's wife was still legally married to a third person, nevertheless refused to grant the decree on the ground that the petitioning husband was estopped by the previous decree of restitution from alleging that the marriage was a nullity. This decision of Mr. Justice HILL appears to be in accordance with the earlier case of *Wilkins* v. *Wilkins*, 1896, p. 108. There the wife petitioned for judicial separation and the husband pleaded in defence that the marriage was a nullity as the petitioner had a husband living at the time. At the trial, however, the jury found that the first husband was dead at the time of the marriage, and a decree for judicial separation was granted in January, 1895. This finding of the jury, however, proved to be incorrect, the first husband being discovered in September, 1895, whereupon the husband presented a petition for nullity. It was held, however, that the husband was estopped by the verdict and decree in the first suit from alleging that the marriage was a nullity, although it was in fact so.

Wilkins v. *Wilkins*, however, indicates the manner in which the problem may be solved, and the proper course to be taken in such cases is apparently to move the Court of Appeal to enlarge the time limited for appealing from the original decision, subsequently proved to be erroneous. The power that the court has of enlarging time is derived under Ord. 64, r. 7, and in a proper case there seems no reason why such a power should not be exercised even long after the time limited for appealing has expired. The solution of the difficulty presented by *Woodland* v. *Woodland* would appear therefore to lie in some such course as that indicated above.

Bonus Schemes and Retail Prices.

THE QUESTION as to how far a retailer may vary the prices of proprietary articles—from the point of view of the criminal law—was considered at the last Durham Assizes. A grocer had taken the responsibility of altering the labels of a well-known brand of tea in the following manner: Packets supplied by the wholesalers at 2s. (for sale at 2s. 2d.) were sold by him at 2s. 8d., and packets supplied at 2s. 5d. (for sale at 2s. 8d.) were sold at 3s. per lb. This was accomplished by the method of removing the labels from the more expensive brands and placing them on the cheaper packets—there being a conflict of evidence as to whether the prosecutors' salesman acquiesced in the practice. In due course the retailer was prosecuted for offences in relation to the labels, and also for obtaining money by false pretences. He was dealt with summarily in regard to the labels, but elected to be tried by a jury on the charges of fraud. The defence was that there was no intent to defraud, and that the labels showed the prices at which the tea was sold by the defendant—not the prices at which the blenders desired it to be sold. The defendant was cross-examined as to whether his customers knowingly paid him 2s. 8d. for tea which was on sale at over 200 other shops in Darlington for 2s. 2d. He contended that his customers willingly dealt with him, as besides getting value for money they could participate in his bonus scheme. The benefit of this was that customers were entitled to boxes of chocolate in exchange for coupons. The defendant was found guilty, and was bound over by Mr. Justice FINLAY for three years, and ordered to pay £75 towards the costs of the prosecution.

Personal Liability of Solicitor to Pay Costs.

THE order which was made by Mr. Justice ASTBURY in *White* v. *Eustace*, on the 19th ult., to the effect that the solicitor for the defendant in that case should be personally liable to the plaintiff for the costs of a counter-claim which the court considered to be frivolous and vexatious, and which was accordingly dismissed in the event of the plaintiffs being unable to recover these costs from the defendant, serves as a useful reminder of the jurisdiction which the court may exercise over solicitors in such matters.

Quite apart from the rules and orders which confer such powers on the court, the court, it seems, is entitled in the exercise of its general jurisdiction over solicitors to order a solicitor personally to pay the cost of the proceedings. Thus, in *Beall* v. *Smith*, 1873, 9 Ch. 85; 29 L.T.R. 625, the court ordered the solicitor, as being an officer of the court, to pay all the costs personally on the ground that the proceedings had been improperly brought.

Again, in *Batten* v. *Wedgwood Coal & Iron Co.*, 1886, 31 Ch. D. 347; 52 L.T.R. 212, an order had been obtained by the solicitor for a plaintiff that the purchaser of certain property sold under the order of the court should pay his purchase money into court, and that the money when paid in should be invested in consols. The money was duly paid in, but the solicitor omitted to leave with the paymaster the necessary request for its investmnet, with the result that the money was not invested. It was held that the solicitor, as the officer of the court having the conduct of the sale, was responsible not only to his client but to the court for the due discharge of his duty, and that he was accordingly liable to make good to the party entitled the interest that had been lost thereby. At the same time it should be pointed out that in this case the solicitor was allowed to set-off against the interest the proportionate amount of a depreciation in the value of consols which had taken place since the date when the investment ought to have been made.

Again, in *Ladywell Mining Co.* v. *Higgins*, 1885, W.N. 55, solicitors were ordered to pay the costs of a summons to stay proceedings, which summons, however, was dismissed with costs, inasmuch security for costs had not been found as ordered.

All the above orders may be regarded as having been made by the court in the exercise of its general jurisdiction over solicitors, but there are certain express provisions in the Rules of the Supreme Court to which attention may be drawn.

Thus Ord. 65, r. 5, provides that where upon the trial of any cause or matter it appears that the same cannot reasonably proceed by reason of the solicitors for any party having neglected to attend personally or by some proper person on his behalf, or having omitted to deliver any paper necessary for the use of the court or judge, and which according to the practice ought to have been delivered, such solicitor shall personally pay to all or any of the parties such costs as the court or judge thinks fit to award.

Again, Ord. 65, r. 11, provides that if in any case it shall appear to the court or any judge that costs have been improperly or without any reasonable cause incurred, or that by reason of any undue delay in proceeding under any judgment or order or any misconduct or default of the solicitor any costs properly incurred have nevertheless proved fruitless to the person incurring the same, the court or judge may call on the solicitor of the person by whom such costs have been so incurred to show cause why such costs should not be disallowed as between the solicitor or his client, and also if the circumstances of the case shall require why the solicitor should not repay to his client any costs which the client may have been ordered to pay to any other person, and thereupon may make such order as the justice of the case may require; and such an order, it should be observed, might be made by the judge on his own motion. (Cf. *Brown* v. *Burdett*, 37 Ch. D. 207.)

These provisions, however, seem to be more for the protection of the client against his own solicitor in respect of costs needlessly incurred or thrown away, than for the protection of the opposite party, who may find himself saddled with a liability to pay his own costs to his own solicitor in respect of an action or counter-claim which has been vexatiously or frivolously brought, the court having the power in the latter case under its general jurisdiction over solicitors, to order the solicitors of the unsuccessful party to reimburse the successful party the costs the latter has incurred in defending the proceedings.

The order, which was made by Mr. Justice ASTBURY in *White* v. *Eustace*, appears to have been of this latter character, and to have been made in exercise of the general jurisdiction of the court over its own officers, the direction given by the learned judge being that the solicitors for the defendant should be personally liable to the plaintiff for the costs, in the event of such costs not being obtainable by the plaintiff from the defendant.

In conclusion, attention might be drawn to one other rule, viz., Ord. 65, r. 27 (55), of the R.S.C., which provides that where in proceedings before the taxing officer any party is guilty of neglect or delay, or puts any other party to any unnecessary or improper expense relative to such proceedings, the taxing officer may direct such party *or his solicitor* to pay such costs as he may think proper, or deal with them under Regulation (21) i.e., set-off or deduct such costs from any costs which may be payable to such party.

Auctioneers' Commission.

(*Continued from p.* 217.)

III.

THE principles of remuneration are well settled, but there appear to be few reported decisions as to commission in recent years. In *Green* v. *Bartlett*, 14 C.B. N.S. 681, it was held that where an auctioneer is the *causa causans* of the sale (as by advertising and putting up the estate for sale by auction, which the purchaser afterwards attended) he is entitled to commission, even though before the actual sale the vendor withdrew the property from sale by that particular auctioneer. A leading case is *Clark* v. *Smythies*, 1860, 2 F. & F. 83, which laid down that, in the absence of an express contract, auctioneers are entitled to reasonable remuneration for sales by private contract affected through their instrumentality, even although by the act or default of the vendor the contract is rescinded. It is for the jury to decide whether the same commission as on sales by auction is reasonable, and apart from express contract the effect of the judgment is that auctioneers are entitled to expenses of abortive attempts at sale.

In *Parker* v. *Moore*, 1921 (unreported), there was an agreement to pay the agents a commission as per scale endorsed on the registration form, which was signed, and stated: "Sales by private contract of freehold, copyhold and leasehold property—on the first £300, 5 per cent.; on the next £4,700, 2½ per cent. For letting residences, etc.—if the term is for more than one year, 7½ per cent. on the first year's rent, and upon the premium or consideration 5 per cent." The question arose whether there was a letting within the meaning of the express written contract, or whether there was a sale within the same contract. The Divisional Court decided that there was a purchase of the assignment of a lease and no letting within the meaning of the express contract as to remuneration.

An implied contract as to remuneration was the basis of the claim in *Baxter Payne & Lepper* v. *Corbett*, at Westminster County Court, in February, 1927. The plaintiffs found a purchaser of the unexpired term of about two and a half years of a lease, containing full repairing covenants, the rent being

£310 a year, and the premium on the assignment £125. The defendant admitted that the plaintiffs were his agents and that they were the effective cause of the transaction, which had been duly completed. The dispute arose over the amount of commission claimed, viz., the institute scale of 10 per cent. on one year's rent of £310, plus 5 per cent. on the premium of £125, being a total of £37 5s. The plaintiffs' evidence was that the vendor's solicitors had instructed the plaintiffs' manager, but the latter was not clear as to which of two expressions had been used, viz., "authorised commission" or "scale commission." Three members of the institute gave evidence that the above charge was fair and reasonable. No evidence was called for the defence, but it was argued that *Parker* v. *Moore*, *supra*, was in the defendant's favour, and that no implied contract could be based upon the fact that the plaintiffs' notepaper showed that some of the firm were members of the institute. The learned deputy judge, Mr. L. T. THORP, held that (1) there was no express contract; (2) the fact that the vendor's solicitors knew of the plaintiffs' membership of the institute did not impute to him or to the vendor any knowledge of the brochure "Scale of professional charges," published by the Auctioneers' and Estate Agents' Institute. On the other hand, *Parker* v. *Moore*, *supra*, only related to an express contract, and the only point there was as to the character of the transaction and not the amount of the remuneration. The evidence in the case before him was that the charges on the institute scale were fair and reasonable, and as this was uncontradicted, judgment was given for the plaintiffs for the amount claimed with costs. This was a London case, and it might be that in the provinces evidence would be available for the defence that the practice is to charge less than the institute scale.

Hitherto we have discussed the position in the case of isolated transactions, but it does not follow that claims to commission can be similarly substantiated in cases where an auctioneer is instructed (1) to realise an estate by order of executors; (2) to develop an estate in conjunction with a builder on behalf of a speculator. In both these cases the auctioneer may be given a free hand, and unless the principal reserves the right of approval, it may be an implied term of the contract that the auctioneer shall take the responsibility of finding purchasers who will carry the transactions through to completion, and that commission shall only be payable on receipt of the purchase money by the vendors.

The Traffic in Women Bill.

THIS Bill, introduced by Lord PARMOOR into the House of Lords in February, is, generally, a Bill to make more comprehensive existing provisions of the English law restricting the traffic in women and children for immoral purposes. It makes several new legislative proposals of great interest.

Part I extends the valuable protection of the Children (Employment Abroad) Act, 1913, to women up to the age of twenty-one. It increases the penalties where the person affected is a female.

Part II greatly increases the punishment for brothel keeping, and introduces severe penalties for tenants, lessees, occupiers or persons in charge of any premises knowingly permitting them to be used for habitual prostitution. The house or room where a solitary prostitute carries on her traffic will no longer be protected, and, though the user herself is not directly liable, she could, presumably, be prosecuted as procuring the commission of the principal's offence. Whether it is in the public interests to drive prostitutes from house to street, there to be the subject of other criminal provisions, will have to be considered. The clause looks like an attempt to destroy prostitution by police action, a difficult and perhaps undesirable course.

A later clause throws the burden of proof further on the accused by making him prove absence of knowledge. The clause is unsatisfactory, and not too clear in its meaning and effect.

Brothels may be searched by warrant "at any time of the day." It is not much use searching brothels except by night. There seems no good reason for the omission here of words introduced into a later clause.

Part III deals with trading in prostitution. Not only males, but females, are to be liable to punishment for living on the earnings of prostitution, and other offences are added to make the life of the immoral trafficker in women's shame a burden. The maximum punishment is to become five years' penal servitude.

An attempt is made to deal with the abuse of our nationality laws by foreign prostitutes marrying men who are British subjects and so avoiding deportation. It is understandable that these marriages should, in proper circumstances, be treated as void for purposes of nationality, but a new kind of decree of nullity by a criminal court convicting of an offence is a dangerous novelty. It is difficult to approve of the power sought to be introduced declaring such marriages "void for all purposes whatsoever."

Procuration and conspiracy to procure are the subjects of Part IV. "White" slave traffic is an unsuitable title, and might create difficulties where coloured women are being exploited. In the International Convention of 1921 the more restricted term has been abandoned, and its use should be discouraged in official or legislative documents as inadequate and misleading.

Traffic offences and trading in prostitution are to become extraditable.

There are a number of amendments proposed to the Criminal Law Amendment Acts, and it is proposed to increase the maximum penalty to twelve months on summary conviction for an indecent assault on a person under sixteen. We deprecate thus further increasing the powers of punishment already possessed by justices.

There are numerous minor and consequential provisions with which we have not space to deal.

It is out of the question that the measure should become law this year. But it will undoubtedly be taken up by the Government of the day at some future date, and the discussion and development of its proposals are worth following.

A Conveyancer's Diary.

Immediate Binding Trust for Sale: *Re Parker*, **1927, 1 Ch. 247.**

In a previous article (71 SOL. J., p. 975), and before the case was fully reported, we made some suggestions on the effect of the decision in *Re Parker*, 1927, 1 Ch. 247.

There is little that can be added to our first impressions. The case is of such importance, however, that it may be expedient to stress once again the underlying principle.

Where land is "held upon trust for sale" it is outside the scope of the S.L.A., 1925 (see s. 1 (7)). A trust for sale is defined, not only for the purposes of the S.L.A., 1925 (s. 117 (1) (xxx)), but also of the L.P.A., 1925 (s. 205 (1) (xxix)), the A.E.A., 1925 (s. 55 (1) (xxvii)) and the T.A., 1925 (s. 68 (19)), as an "immediate binding trust for sale." What then is the meaning of this latter expression?

The first authority on the point was *Re Leigh*, 1926, Ch. 852. According to this case there was not a "binding" trust for sale if there were any interests in the land having priority to the estate of the trustees which could not be overreached by them.

In the light of *Re Parker* this view is no longer tenable. The word "binding" as applied to the term trust for sale is an

innovation. It may have been inserted *ex abundanti cautela*, but more probably was intended to meet a case of a revocable trust for sale such as existed in *Re Goodall's Settlement*, 1909, 1 Ch. 441.

The correct view seems to be that there is only a trust for sale for the purposes of the S.L.A., 1925, when the whole legal estate, the subject of the settlement of the land, is vested in the trustees for sale. This, we suggest, is the true interpretation of *Re Parker*. There are, it must be admitted, isolated phrases in the judgment of Romer, J., which lend support to the principle of *Re Leigh*. Taken by themselves these phrases might be used to support the contention that all interests, both legal and equitable, in the land which forms the subject-matter of the settlement, must be subject to the trust for sale. When, however, the judgment is read as a whole it is sufficiently clear that only an outstanding legal estate created by the settlement would take the case out of s. 1 (7).

The principle of this decision is an admirable illustration of the importance which is now attached to the legal estate.

Suppose that A was, before 1926, an owner in fee simple, subject to a legal term to secure portions. A conveys the land to X and Y upon trust for sale. Clearly, according to *Re Parker*, there is not an immediate binding trust for sale and the land is settled land. The person to convey the land will vary according to the terms of the trust. If there is anyone who, by virtue of his interest in the proceeds of sale of the land, is a person with the powers of a tenant for life under S.L.A., 1925, s. 20 (1), he will be the estate owner. Otherwise the S.L.A. powers will be in the statutory owners under s. 23.

The result of this decision is satisfactory. The tenant for life or statutory owners can overreach the portions term, which is converted into an equitable term on the execution of a vesting deed (see S.L.A., 1925, 2nd Sched., para. 1 (6)).

The number of cases to which *Re Parker* is applicable is comparatively small, and will continually decrease. In settlements executed after 1925 charges for portions can only take effect in equity. Further, in pre-1926 settlements all legal family charges will become equitable so soon as a vesting deed is executed (S.L.A., 1925, 2nd Sched., para. 1 (6)). Where a tenant in tail subject to equitable family charges bars the entail and conveys on trust for sale, if our interpretation of *Re Parker* is accurate, the land will cease to be settled land. The estate owners will be the trustees for sale.

It seems that in such a case a purchaser from the trustees would *prima facie* take subject to the prior charges. This could only be averted if the trustees were approved or appointed by the court under L.P.A., 1925, s. 2 (2), or if with the consent of the purchaser (see *ib.*, s. 42) the concurrence of the person entitled to the charge were obtained.

The real importance of the decision seems to be that it has definitely discountenanced the meaning that was placed in *Re Leigh* upon the expression "binding" in relation to trusts for sale.

Landlord and Tenant Notebook.

Re-control.

We dealt in our last issue with the case of *Ebner* v. *Lascelles*, and with the question of the effect of non-occupation by a tenant of premises which would otherwise be within the Rent Acts, leaving over for consideration the second point raised in that case, viz., the status of a tenant of premises which have been sub-let furnished, after such sub-letting has terminated.

It will be understood that by virtue of proviso (1) of s. 12 (2) of the Rent Act, 1920, the Rent Acts will not apply to premises which have been let furnished. In *Ebner* v. *Lascelles* a tenant while a contractual tenant had sub-let part of the premises furnished and the remainder unfurnished, in each case to separate tenants. *The important point to note, however, is that both these portions became vacant prior to the expiry of the lease.*

It is clear that the part which had been sub-let furnished was taken out of the operation of the Act, and that, had the sub-lessor been a statutory and not a contractual tenant against whom proceedings for the recovery of possession were being taken, possession of that part, at any rate, could have been obtained by the landlord (of the sub-lessor): *Gidden* v. *Mills*, 1925, 2 K.B. 713.

In this connexion it might be interesting to examine what would be the position in such circumstances if the tenancy was a contractual and not a statutory one. *Gidden* v. *Mills*, *supra*, it is submitted, clearly shows that a part, at any rate, of the premises (*i.e.*, the part sub-let unfurnished) must be regarded as being completely within the Act. Further, there can be no question as to the recovery of possession in such a case (apart from forfeiture), and the only likely points to arise are with regard to increase of rent. Could the sub-lessor, in such a case, successfully contend, as against his immediate landlord, that the rent (payable by him) had been unlawfully increased? It would seem he clearly could not do so, if the *whole* of the premises had been sub-let *furnished*. If, however, only part had been sub-let furnished, the better opinion would seem to be that the whole of the premises must, notwithstanding, be regarded as controlled, as between the sub-lessor and his immediate landlord, so that the sub-lessor would be entitled to contend, as against his own landlord, that there had been an illegal increase of rent. As far as we are aware, there is no case that deals expressly with this point, though *Ebner* v. *Lascelles* seems to afford some support for the view taken above.

To return now, however, to the question of re-control.

Leslie & Co. v. *Cummings*, 1926, 2 K.B.D. 417, is an authority for the principle that where premises have been sub-let furnished or in such a way as to have the effect of withdrawing the protection of the Act (according to *Prout* v. *Hunter*, 1925, 2 K.B. 365, 736), the protection of the Act may nevertheless be revived where the sub-letting, which has had the effect of de-controlling the premises, has terminated. In other words, "de-control" effected in this way is not absolute, but will continue only as long as the "decontrolling" sub-tenancy continues. Thus in *Leslie & Co., Ltd.* v. *Cummings*, *supra*, the defendant, who was a statutory tenant of a flat, had sub-let the whole flat furnished on two occasions to different persons. On the expiry of the last sub-tenancy, a portion only of the flat was sub-let furnished, and while this sub-tenant was in possession proceedings for the recovery of possession of the *whole* of the premises were brought by the landlord against the statutory tenant (sub-lessor). It was held that the premises, although temporarily de-controlled while the sub-lettings of the *whole* of the premises continued, had become re-controlled on the expiry thereof, and that, as possession had been claimed of the whole and not of the part (sub-let furnished), the landlord was not entitled to an order. The Court, however, expressed the opinion that, had possession been claimed of that part of the premises which had been sub-let furnished, the landlord might have been entitled to recover possession thereof (*cf.* 1926, 2 K.B., at p. 423).

The principle of *Leslie* v. *Cummings* was applied by the Court to the facts in *Ebner* v. *Lascelles*, though the facts in this case were not exactly similar, since the questions were as to the liability of the tenant for dilapidations and as to increase of rent, and since, further, these questions had to be determined in respect of a contractual and not a statutory tenancy, the Court holding in accordance with the above principle that the operation of the Rent Acts had to be taken into consideration in determining the above questions.

The attention of the Legal Profession is called to the fact that THE PHŒNIX ASSURANCE COMPANY LTD., Phœnix House, King William Street, London, E.C.4 (transacting ALL CLASSES OF INSURANCE BUSINESS), invites proposals for Fidelity Guarantee and Court Bonds, Loans on Reversions and Life Interests. Branch Offices at Byron House, 7, St. James's Street, S.W.1; 187, Fleet Street, E.C.4; 20-22 Lincoln's Inn Fields, W.C.2; and throughout the country.

Our County Court Letter.

DAMAGE FROM SHOCK.

In the recent case of *Henderson* v. *Middlesbrough Corporation* the question arose whether damages can be claimed for shock sustained through being the spectator of an accident. The plaintiff had been walking along the pavement when a corporation omnibus swerved in order to avoid another accident. The omnibus mounted the kerb, and slightly injured a man who was standing near the plaintiff. Her evidence was that ever since the day of the accident she had been a victim of nerves, and was unable to attend to her household duties. In the engagement of outside help she had incurred extra expense to the amount of £39, which sum she claimed to recover as damages from the corporation. The latter admitted liability and paid £10 into court. His Honour Judge McCarthy decided that this was adequate, and gave judgment accordingly.

The above admission of liability is a recognition of the principle established in previous cases. In **Hambrook* v. *Stokes Brothers*, 1925, 1 K.B. 141, the defendants' driver left their lorry at the top of a steep and narrow street in Folkestone, with the engine running, and without taking precautions to prevent it from moving. The lorry moved off by itself down the hill, and was seen by the plaintiff's wife, who was not in any personal danger. She became anxious for her children, however, as the lorry would have passed them higher up the street and round a bend. Ultimately the plaintiff's wife found one of her children in hospital—badly hurt by the lorry. Being pregnant at the time, she afterwards had a miscarriage and died. The plaintiff, her husband, sued the lorry owners under the Fatal Accidents Act, 1845, for the loss of her services as manageress of his restaurant. The defendants admitted negligence, but contended that the shock alleged to have been sustained by the deceased was too remote. Mr. Justice Branson directed the jury that if the shock was caused by fear for her children's safety, as distinct from her own, the woman's husband could not recover damages. The verdict was given for the defendants, but the Court of Appeal ordered a new trial on the ground of misdirection. Lord Justice Bankes stated that a cause of action arose (*a*) if the shock resulted from what the woman saw or realised herself, and not from what someone told her; (*b*) if the shock was due to a reasonable fear of immediate personal injury to herself or her children. Lord (then Lord Justice) Atkin concurred, but Lord Justice Sargant dissented.

The court extended the principle laid down by the Divisional Court in *Dulieu* v. *White & Sons*, 1901, 2 K.B. 669, which decided that shock from fright, unaccompanied by any actual impact, gives rise to a cause of action for physical injury to the plaintiff. Mr. Justice Kennedy had suggested a limitation to this extent—that the fright must be due to the risk of injury to oneself. This dictum has now been disapproved, and it is immaterial whether the fear of injury is to oneself or some other person.

An analogous subject was considered in *Brandon and Wife* v. *Osborne, Garrett & Co., Ltd., and Others*, 40 T.L.R. 235. Mr. Brandon went with his wife to the defendants' premises on business and they were directed to a department with a skylight. The latter fell in, owing to negligence, and a piece of glass hit Mr. Brandon, but did not cut either him or his hat. Being neurasthenic, he was put to expense for medical attendance due to the severe shock to his nerves. The only difficulty was occasioned by the claim of the wife, who was not struck or touched by the glass. On seeing what was happening, however, she had instinctively tried to pull her husband away, and in so doing had strained her leg and brought on a recurrence of thrombosis. The defendants contended that no injury had been caused to her by their negligence, as no danger was threatening her and she was not trying to escape any impending danger. Mr. Justice Swift held, however, that there was no contributory negligence on her part, and that she was therefore entitled to damages.

A practical joke as the source of a shock was considered in *Wilkinson* v. *Downton*, 1897, 2 Q.B. 57. The defendant falsely told the plaintiff that her husband, while returning in a wagonette from the races, had met with an accident and had had both legs broken; that he was at the "Elms" public-house, and wished the plaintiff to go with a cab and pillows to fetch him home. She became ill with the shock, and the jury awarded her £100 for shock and 1s. 10d. railway fares. Mr. Justice Wright held that these amounts were recoverable.

*The effect and implications of this and other cases on "nervous shock" are discussed at some length in L.Q.R., Vol. XLI, pp. 297–305.

Practice Notes.

COUNTER-CLAIM—LIMITATION OF TIME.

Another difference in the essential characteristics of a counter-claim and a set-off was brought to light in the case of *Lowe* v. *Bentley*, *Times*, 14th March, 1928, the question in issue in that case being whether, for the purpose of the period of limitation in the case of a counter-claim, the time had to be calculated as running down to the issue of the writ in the action or, on the other hand, down to the date of the delivery of the counter-claim—a question upon which, curiously enough, there has been no previous pronouncement by any court of law.

The law on this point with regard to a set-off must be considered as having been long settled by the case of *Walker* v. *Clements*, 15 Q.B. 1046, it having been held there that the Statute of Limitation is not a bar to a set-off unless the six years have expired before action brought, i.e., before the issue of the writ.

There are, indeed, *dicta* in *Walker* v. *Clements*, which might be construed as meaning that the rules with regard to a counter-claim are the same as the rules with regard to a set-off, but it should be noted that the *dicta* in this case are referring to a set-off being in the nature of a "cross-action," and that the modern counter-claim was not in existence at that time, having been created at a later date by s. 24 (3) of the Judicature Act, 1873. It seems dangerous therefore to argue on the strength of any authorities prior to the Judicature Act, 1873, especially in view of the fact that some of the characteristics of a counter-claim are admittedly different from those of a set-off. The authorities indeed seem to show that a counter-claim is in the nature of not only a cross-action, but also an independent action, so that a counter-claim will not, for example, automatically abate by the discontinuance of the original action: *Beddall* v. *Maitland*, 11 Q.B.D, 464. The proper inference, therefore, seems to be that on a question of a limitation of time, the time must be regarded as running until the delivery of the counter-claim, so that if the period of limitation expires after the issue of the writ, but before the delivery of the counter-claim, the counter-claim must be regarded as being statute barred, and this was the view taken by Mr. Justice Mackinnon in *Lowe* v. *Bentley* (*supra*).

INCORPORATED ACCOUNTANTS.

The next examination of candidates for admission to the Society of Incorporated Accountants and Auditors will be held on 7th, 8th, 9th and 10th May, 1928, in London, Manchester, Cardiff, Leeds, Glasgow, Dublin, Belfast, Cape Town, Johannesburg and Durban.

Women are eligible under the Society's regulations to qualify as Incorporated Accountants upon the same terms and conditions as are applicable to men.

Particulars and forms are obtainable at the office of the Society, 50, Gresham-street, London, E.C.2.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers are invited and will be answered by some of the most eminent authorities of the day. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 29, Breams Buildings, E.C.4, be typewritten on one side of paper only, and be in duplicate. Each copy to contain the name and address of the subscriber. To meet the conveniences of Subscribers, in matters requiring urgent attention, answers will be forwarded by post if a stamped addressed envelope is enclosed.

Agricultural Holding—Continuance of Tenancy—Tenancy for One Year—Covenant to keep and leave in good order and condition—Dilapidations.

Q. 1199. B was the tenant of a farm for over twenty years under leases granted to him from time to time. Owing to rent being in arrear, the landlord, in August, 1925, gave B notice to quit at 11th October, 1926. At the latter date B had nowhere to go, and the landlord allowed him to stay on under a new agreement for one year to 11th October, 1927, but did not specifically reserve any right to claim for dilapidations and no notice of claims by the landlord was served within the specified time under the Agricultural Holdings Act, 1920. In the agreement for the past year, B agreed "to keep and preserve and so leave in good order and condition" "all gates and ditches and to cultivate manage and leave the land in a good and husbandlike manner and as near the four course shift as practicable according to the most approved system of husbandry used and practised in the neighbourhood." There is serious deterioration of the land owing to bad farming and other dilapidations, such as missing gates, for which B was responsible under his old leases. B contends that the landlord's claim for dilapidations can only extend to such as have occurred in the past year, on the ground that a new contract was entered into which is outside the Agricultural Holdings Act, 1920, and that he (B) is entitled to bring evidence to show that he is leaving the farm in the same state as it was in at the commencement of his last agreement (i.e., a year ago). Is the tenant's claim well founded?

A. Although the agreement for one year, to 11th October, 1927, contained a covenant "to keep and preserve and so leave etc.", it must be remembered that s. 10 of the Agricultural Holdings Act, 1923, does not prevent the landlord from relying on his common law rights. Under that covenant it seems the tenant would be liable at common law, since a covenant to "*keep*" in good order and condition necessarily involves a convenant to "*put*" the premises, etc., in good order and condition, if necessary, and keep them in that state. Further, if a claim be made *solely* under s. 10 of the Agricultural Holdings Act, 1923, *and not on the covenant at all*, the tenant would have to be treated as if he had just become the tenant under the new agreement for one year: *cf.*, *Freeman* v. *Evans*, 1922, 1 Ch. 36; in which event he would be liable as if his tenancy had only commenced on the 11th October, 1926. In any case, the covenant would make B fully liable for the dilapidations to gates and ditches and also for the mismanagement of the farm, because he is obliged under the covenant to "*keep*," and "*leave*" the gates and ditches in *good order and condition*, and also to "*leave*" the land in a "*good and husbandlike manner*."

Cheque—Holder in Due Course—Right to sue Drawer.

Q. 1200. B bought a cow for £9 from A in the cattle market, but not under the hammer, and gave A his crossed cheque for the amount made payable to A or order. On the same day A bought goods amounting to a few shillings from C, a shopkeeper, and tendered the cheque in payment receiving from C the change. C placed the cheque to his account at the bank, but the cheque was returned marked "Payment stopped," B having discovered that A had stolen the cow. A is awaiting his trial for the theft. Can C successfully sue B for the amount of the cheque? Reference to cases will oblige.

A. Assuming (1) That the cheque was not marked "Not negotiable," and (2) That C took it not only for value but in good faith, and that when he took it he had no notice of any defect in A's title to it, C is a holder in due course within s. 29 of the Bills of Exchange Act, 1882, and as such holds the cheque "free from any defect of title of prior parties as well as from mere personal defences available to prior parties among themselves, and may enforce payment against all parties liable on the [cheque]": see s. 38 of the Act of 1882. C can therefore sue B for the amount of the cheque. In addition to the sections mentioned, see also s. 2 for definition of holder, it being borne in mind that a cheque is a bill for the purposes of these sections.

Advertisements for Creditors—T.A., 1925, s. 27—L.P. (Am.) A., 1926, Sched.

Q. 1201. Is it considered that personal representatives would obtain the freedom from liability intended to be conferred on them by compliance with the provisions of s. 27 of the T.A., 1925 (as amended by the L.P. (Am.) A., 1926) where no part of the estate proposed to be distributed is "land," and there are no special circumstances which would lead "a court of competent jurisdiction" to direct "other like notices," if notice by advertisement is given in the *London Gazette* only of intention to make distribution? If not, in what other newspapers or papers should the notice be published in the case of a deceased person who at the time of his death was ordinarily resident abroad?

A. The questioner will find this matter discussed in the answer to *Q.* 664, vol. 71, p. 119. The *London Gazette* is *sine quâ non*. The rest depends on the practice of the court, which, as stated in the answer to *Q.* 664, the personal representative must know at his peril. In addition to *Re Bracken*, 1889, 43 C.D. 1, reference may be made to *Stuart* v. *Babington*, 1891, 27 L.R. Ir. 551, in which two advertisements in one local paper were held insufficient. One advertisement in a particular newspaper will suffice, but, if the executor wishes to make himself unquestionably safe, advertisements in two newspapers circulating where the deceased resided are recommended.

Company—Sale of only Asset without Liquidation—Whether *Intra Vires*.

Q. 1202. A is a limited company incorporated under the Companies Acts, 1908 to 1917, and holds in fee simple a freehold estate called Blackacre comprising 1,000 acres. The company sells 900 acres and then contracts to sell to B the remaining portion of 100 acres, which is the only asset which the company then possesses. Can B safely take a conveyance of the 100 acres from A, or must he insist on A going into liquidation and the liquidator joining in the conveyance? Reference is made to *Bisgood* v. *Henderson's Transvaal Estates*, 1908 (1 Ch. 743), and s. 192 of the Companies Act, 1908.

A. If a company's whole undertaking is not sold as a going concern, and merely land is sold, it seems extremely unlikely that it would be left stripped of everything, and without goodwill, office furniture, etc. In the case cited above the sale involved liability on shareholders beyond that which they had contracted to incur as such. Granted, however, that the 100 acre plot is the only asset, it will be replaced by the asset of purchase-money on the purchase, and the purchaser will run no risk of the transaction being impugned owing to the company's insolvency, if it could be so impugned. And he

could certainly have no right, as such, to insist on liquidation before completing his contract.

Will—Trustees for Sale with powers of a Tenant for Life—Exchange "as Personal Representatives"—Effect.

Q. 1203. A, testatrix, died in 1898, having by her will appointed two persons to be executors and trustees and devised all her real estate to her trustees on trust for sale with power to postpone, and she declared that her trustees should have the powers of a tenant for life under the Settled Land Acts. In 1923 part of the estate, consisting of freehold land, was sold by the executors "as personal representatives" to G. Later on in the same year the executors "as personal representatives," executed a deed of exchange, by which they conveyed another plot to G, and the plot previously conveyed to him was conveyed back to them. Is this deed of exchange valid? There was no power in the will to purchase land.

A. The trustees for sale, being specifically given the powers of a tenant for life, could exchange, see S.L.A., 1882, s. 3 (iii). They should, of course, have done so "as trustees." The words, "as personal representatives," however, presumably, are inserted by way of covenant for title only, and, on the principle of "*ut magis valeat quam pereat*," should not in themselves invalidate a transaction which the persons concerned had in another capacity full power to carry out. Praying also s. 63 of the C.A., 1881, in aid, therefore, the opinion is here given that the deed was valid. The fact that the trustees had previously sold the land taken in exchange, might require explanation to the beneficiaries, but would not avoid the transaction.

Trustee Sole Trustee for Sale—Power to Mortgage.

Q. 1204. A and B held freehold property prior to the passing of the L.P.A., 1925, as tenants in common, in equal shares. A has died leaving B, by virtue of the Act, trustee of the entirety of the property upon the statutory trusts. Has B power to create a mortgage to replace a mortgage which was existing at the time of the passing of the Act, and has since been paid off?

A. The issue whether the trustees for sale have a power to mortgage has often been discussed in these columns, see answers to *Qs.* 133, 142, 164, 170, 242, and 137 (the latter as to a post-1925 trust), and the answer, with which the compilers of precedents agree, has been in the affirmative. In the above questions, however, nothing arose as to the receipt. Here a sole trustee would have to receive the money. The opinion is given that money raised by mortgage is "capital money" within the T.A., 1925, s. 14, and the L.P.A., 1925, s. 27 (2), as amended by the L.P. (Am.) A., 1926, and that, therefore, any proposed mortgagees properly advised would require B to appoint a co-trustee to receive it.

Trustee—Sole Trustee and Executor of Will—Bankruptcy Power to Remove and Appoint Another.

Q. 1205. A (who died in 1925) made his will, giving all his estate to his wife for life, and after her death, to her children, (who are all of full age), and appointed B sole executor. B proved the will and allowed the widow to receive the rents and profits. No vesting assent was made. B has recently been adjudicated bankrupt. In whom is the legal estate now vested? Who has power to appoint trustees under the S.L.A., 1925?

A. The removal of a bankrupt trustee by the court is discussed in *re Adams' Trust*, 1879, 12 C.D. 634, and the procedure in the case of a sole bankrupt personal representative in *re Hopkins*, 1881, 19 C.D. 61. Here, assuming the widow is alive, she and her children can at once appoint trustees for the purposes of the S.L.A., 1925, under s. 30 (1) (*v*), to supersede B acting under s. 30 (3). In respect of the personalty, the widow and children should call on B to resign and appoint their nominees in his place. If he declines to do so and the court has to be invoked, *re Adams' Trust, supra*, is authority that (for what it is worth) an order would be made on him to pay the costs.

Will—Construction—Bequest of "Contents of Dwelling-house"—Whether Policies of Assurance Pass.

Q. 1206. By her will, X bequeathed to Y, "all the contents of my dwelling-house of whatsoever nature except money and securities for money." The contents included assurance policies on the life of X. Does Y take the same? Authorities will oblige.

A. The questioners are referred to *re Robson*, 1891, 2 Ch. 559. and the authorities there cited. On those authorities the opinion is here given that the policies would not pass under the above bequest. It may seem paradoxical at first sight that, if the contents of a desk are given, and it contains documents showing title to choses in action, such choses pass, but not if the contents of a house are given, though the desk is in the house. The answer, however, if founded on a common sense view, that the desk will probably contain little else of value, and the testator would not have troubled to bequeath pencil, and pens, whereas, in giving the contents of a house, his mind may be deemed fixed on the actual chattels within it.

Small Dwellings Acquisition Acts, 1899 to 1923—Possession by Local Authority.

Q. 1207. On the 30th day of May, 1924, certain premises were conveyed to H in fee simple. On the 31st day of May, 1924, the said premises were mortgaged to a council under the provisions of the Small Dwellings Acquisition Act, 1899-1923, as security for an advance of £405. The rate of interest was 5 per cent. and repayment was to be made over a period of thirty years by combined instalments of principal and interest. The mortgagor is now considerably in arrears with his payments and the mortgagees desire to take possession of the premises. Having regard to the provisions of s. 5 (5) of the 1899 Act and the words "whatever may be the value of the house," it is assumed that proceedings for recovery of possession can be taken under the Small Tenements Recovery Act 1838, in this case; and that a notice to quit is *not* necessary notwithstanding the concluding words of the sub-section above referred to. We presume also that no formal demand for possession is necessary (s. 3, sub-s. (4), of the 1899 Act). Please advise us whether our contentions are correct.

A. Since in law the mortgagee may go into possession whenever he pleases without giving any kind of notice to the mortgagor (see *Doe d. Roby* v. *Maisey*, 8 B. & C. 767) and the Small Tenements Recovery Act, 1838, provides for relief when a term shall have expired "by a legal notice to quit or otherwise" the opinion is here given that s. 5 (5) does not import the novel obligation on the local authority as mortgagee to give such a notice, nor is a demand for possession necessary before taking proceedings, though it might be expedient to find out whether the mortgagor was willing to yield it and so save expense.

Jurisdiction of the Anglo-German Mixed Arbitral Tribunal.

Q. 1208. The debtor in this case was the creditors' branch manager in London at the outbreak of the war, and he continued for some months afterwards to run this office here, paying the usual office expenses and receiving moneys on their behalf, of which he kept proper account. The expenses, however, balanced the cash in hand and cash received. The creditors filed a claim against the debtor, which was finally rejected by the British Clearing Office on 18th August, 1927; but are now pursuing the claim before the above tribunal and have filed their case. The creditors have visited the debtor in London, investigated the accounts, and have written saying that they are satisfied that there is no amount due to them; but that the German authorities will not accept that view and insist on pursuing the matter.

(1) In view of the fact that the relationship between the parties was that of employer and employee (or at most principal and agent) and not of creditor and debtor, has the tribunal jurisdiction ?

(2) Since the creditors have no claim against the debtor and have stated that fact in writing, is the German Crown Agent entitled to prosecute the claim ?

(3) If the claim is anything at all, it amounts to a charge of fraud against an employee or agent (without the slightest foundation). Has the tribunal jurisdiction to deal with it ?

(4) Is there a right of appeal against the decision of the tribunal, assuming the debtor takes no steps to object to summary procedure ; but questions or objects to the jurisdiction of the tribunal in his " Debtor's case " when filing it ?

A. (1) The fact that the relationship between the parties is that of principal and agent cannot affect the question of the jurisdiction of the tribunal if there is a sum owing or alleged to be owing by the agent to the principal.

(2) The fact that the creditors have stated that they have no claim against the debtor does not disentitle the German Crown Agent from prosecuting a claim, although it will be a good ground for dismissing it.

(3) The tribunal has jurisdiction.

(4) There is no appeal : see Art. 304 (*g*) of th Treaty of Versailles.

Vendor and Purchaser—Production of Deeds in Possession of Vendor's Mortgagees or their Solicitors.

Q. 1209. Cost of production of deeds in possession of vendor's mortgagees' solicitors who reside in another town. Previous to the L.P.A., 1925, the point was governed by cl. 3 (6) of the C.A., 1881, and the case of *Willett and Argenti*, 1889, 60 L.T. 730, but s. 45 (4) L.P.A., 1925, appears to replace the said section of the C.A., 1881. This point has recently been referred to the Local Law Society, the secretary of which has written " if the contract is an open contract, and does not incorporate any of the Law Society's or . . . Society's conditions the expenses of the production of deeds in the possession of the vendor's mortgagee's solicitors have to be borne by the purchaser if he requires to verify thereby statements set out in a proper abstract supplied by the vendor's solicitor." This view, which appears to overlook the provisions of the L.P.A., 1925, is not considered conclusive, and a further opinion is required.

A. Possibly the answer given on behalf of the local law society relates to the expenses of travel, which are not qualified by the exceptions made to the expenses of production in s. 45 (4) *supra*. There can be no doubt as to the change of law as to the latter, and the vendor must at his own expense procure production of the deeds at the place where they happen to be, see answers to *Q.* 116, p. 321, vol. 70, and to *Q.* 879, p. 619, vol. 71. The purchaser of course pays his own solicitor for his costs.

Husband and Wife—Purchase of Realty by Wife—Conveyance to Husband and Wife as Joint Tenants—Effect.

Q. 1210. In December, 1918, a freehold house was purchased by husband and wife and conveyed to them in fee simple as joint tenants. The wife died on 25th August, 1927, and Estate Duty was paid on one-half of the value of the property, the husband being still alive. The whole of the purchase money was provided by the deceased and the authorities, upon being informed of this, now contend that Estate Duty is payable in respect of the value of the whole of the property under s. 2 (1) (*c*) of the F.A., 1894. To this we have replied that it is not at all clear how the claim for duty is maintained, and we shall be obliged if you will kindly state which contention is, in your opinion, correct.

A. The general rule is that a purchase by a wife, even wholly in the name of her husband, implies a trust for her, see *Mercier* v. *Mercier*, 1903, 2 Ch. 98. *Primâ facie*, therefore, the whole income belonged to her during her life, and if so, the revenue authorities correctly deduce that it passes, though the duty appears to fall under F.A., 1894, s. 2 (1) (*b*) rather than 2 (1) (*c*). The presumption of a trust may, however, be rebutted, and if the husband received half or all the income, he could establish a gift of it in his favour. In that case he would only pay on the proportion of the land of which the wife received the income for her own use, the gift of the rest being made over ten years ago.

Fallen Tree on Highway—Liability of Highway Authority.

Q. 1211. At dusk, on 6th January, 1928, a tree fell across the highway, and was found by the roadman the same afternoon. It is known that the policeman was aware that it had fallen across the highway, and the owner of the tree was also aware, but no lighting precautions were taken nor was any warning to pedestrians or vehicular traffic given. On the following morning, before actual daybreak, but some sixteen hours after the tree fell, P was proceeding on the highway in his motor car and collided with the tree, the ivy on which, together with the background, formed a natural camouflage. The lights of the car showed the ground underneath the tree, but not the tree itself. Considering *Hudson* v. *Bray*, 1917, 1 K.B. 520, and *Noble* v. *Harrison* quoted in Sol. J. of 14th January, 1928—

(1) Has there been neglect on the part of the highway authority to light the obstruction on the highway, and

(2) Are there circumstances in which the highway authority could be held to be liable ?

A. Reference should be made, not to the above-mentioned cases, which only deal with the liability of the landowner, but to the line of cases, of which the most recent is *Coleshill* v. *Manchester Corporation, The Times*, 24th January, 1928. The Court of Appeal there reversed a judgment in favour of a pedestrian who had fallen into an unlighted and unfenced trench in a road not a public highway. The court distinguished, the case from *Oldham* v. *Sheffield Corporation*, 43 T.L.R. 222, where a motorist recovered damages after driving through an unlighted fence at the end of a cul-de-sac (not a highway) and then into a ravine. A row of lights, however, there gave the impression of a continuous road. The proposed plaintiff in the above question is therefore in a stronger position through, having suffered damage on a highway. A falling tree, as the source of injury, was considered by the House of Lords in *Mackie* v. *Western District Committee of Dumbartonshire C.C.*, 1927, W.N. 247. The decision was only to the effect that the statement of claim disclosed a cause of action, but it was held that, as the tree was a patent danger before it fell, the defendants (subject to the claim being substantiated by the evidence) were liable for negligence. *A fortiori*, the highway authority are liable where the tree has already fallen to the knowledge of their roadman, as above. The plaintiff's difficulty will apparently be to prove that he was not guilty of contributory negligence, and that the natural camouflage was not produced by his excessive speed.

Charity—Roman Catholic—Purchase of Land for Rest House for Sisterhood.

Q. 1212. About 100 years ago an order of nuns was founded, and is an enclosed order. It has no charter of incorporation. The sisters make a vow of poverty on joining the community, promise to obey the rules, and everything is owned by the community in common. The objects of the order are (*a*) the teaching of the poor, and (*b*) religious purposes. Attached to the convent is an elementary day-school for girls, which is controlled by a board of managers, and is, of course, under the local education committee. Several of the sisters teach in such day-school (as well as lay teachers), and receive salaries from the education committee. The sisters make a voluntary gift of their salaries (after deduction of income tax) to the community, and same is used in conjunction with the

income, and capital (if necessary) of various investments ol railway and other stocks and mortgages for the generaf purposes of the order or community. Other sisters have other duties to perform which do not produce income, whilst others are too old or are unable to undertake any duties. We understand that the convent, chapel and school together with the land forming the site thereof, belong to the Bishop of the Diocese, and the community only have the permitted use thereof. Now, as previously stated, the order has recently agreed to purchase a small plot of land and dwelling-house, about fifty miles from the convent, to be used by such of the sisters as may from time to time fall sick or unwell, partly as a rest house, and partly for the exercise of their religious devotions. Under the circumstances no income will be produced from such house. It will merely entail expense in the upkeep, rates, etc. It is our intention to take a conveyance of the land and house to four ot the sisters, upon trust for sale, and the following questions now present themselves to us, viz. :—

(*a*) Is the religious order in question deemed to be a charity ?

(*b*) Is a licence to acquire land under the Mortmain Acts required, notwithstanding the fact that the order is *not* an incorporated body, and it has *not* the quality of perpetual existence ?

(*c*) Whether or not such an order is considered exempt from the provisions of s. 4 of the Mortmain and Charitable Uses Act, 1888 (that is, Pt. II), by reason of s. 7 (2), in view of the fact that the order is a society, associated together for religious purposes ?

(*d*) Whether or not such an order is exempt from the provisions of s. 29 (1), (2), (3) and (4) of the S.L.A., 1925 ?

A. (*a*) The objects of the order as stated above are charitable and the opinion is here given that the provision of the rest house is a charitable purpose : see *Re Estlin*, 1903, 47 Sol. J. 691 ; see also *Re Delany*, 1902, 2 Ch. 642, and distinguish *I.R. Commissioners* v. *Roberts*, 1927, 43 T.L.R. 52, in which the rest house was held to be a commercial venture.

(*b*) The order being an incorporated body, the opinion is here given that it does not come within the veto contained in s. 1 of the Mortmain Act, 1888, forbidding assurances to corporations, save by licence.

(*c*) and (*d*) The rest house is only indirectly to be used for a religious or educational purpose, and it will be safest to assume that the formalities prescribed by s. 4 of the Mortmain Act 1888, as modified by the S.L.A., 1925, s. 29, are applicable.

Income Tax—Discretionary Trust—Allowances—Personal and for Children.

Q. 1213. By his will A directed his trustees to hold his residuary estate in trust to allow to B (with whom he was living as his wife) from time to time until all his children by her should attain twenty-one, out of income or capital, but primarily out of income, such sums of money for her maintenance, use and benefit as his trustees in their absolute discretion should deem necessary or desirable. Testator had three children by B, all of whom were under sixteen at A's death, and are living with B. The trustees decided to allow B £1,000 a year out of income, and have paid her that sum for several years without deduction of tax. All income tax from trust funds is taxed at the source at full rate. Is B entitled to reclaim tax for (*a*) personal allowance £135, (*b*) allowance in respect of children, and (*c*) half standard rate for first £225 of taxable income on the basis of her income being £1,250 per annum which has borne tax at full rate.

A. The questions asked are answered in the affirmative in accordance with the provisions of the F.A., 1920, namely (*a*) s. 18 (1), (*b*) s. 16 (2) (assuming from the form of the question that the children are not legitimate, and (*c*) s. 23. Income received under a discretionary trust is taxable as ordinary income, see *Drummond* v. *Collins*, 1915, A.C. 1011.

Correspondence.

Auctioneers' Commission.

Sir,—The position established by the cases referred to in the letter of the 26th March, 1928, from the Secretary of the Auctioneers' Institute can best be understood by reference to the facts.

In *Lott* v. *Outhwaite*, 1893, 10 T.L.R. 76, the defendant vendor had agreed to accept £18,500 for the land and to " allow you 2½ per cent. bonus on completion of the purchase." The purchaser was unable to complete, and the vendor only received about £7,000. The estate agent having died, his executors assigned his interest to the plaintiff, who claimed commission on the whole £18,500, viz., £462 10s., or alternatively a remuneration *quantum meruit*. Mr. Justice Bruce gave judgment for the defendants, and the Court of Appeal upheld the judgment. Lord Justice Lindley said that, in order to entitle himself to commission, the agent must prove either (1) completion, or (2) non-completion due to the fault of the vendor. The plaintiff had proved neither, but claimed also on an implied contract to pay the agent a *quantum meruit*. The answer was that there could be no implied contract when there was an express contract.

In *Beningfield* v. *Kynaston*, 1887, 3 T.L.R. 279, the sale was by a tenant for life, and the agent was to have " the usual commission out of the purchase money." The plaintiff found a purchaser at £5,250, and a 10 per cent. deposit was paid, viz., £525. This was forfeited, the estate was sold by auction for £6,100 to another purchaser, and the plaintiff claimed 2½ per cent. upon £5,250, viz., £135. Mr. Justice Hawkins left to the jury the question whether there was a purchaser able to complete. The jury found in the negative, and the learned judge gave judgment for the defendant. The Divisional Court set this aside and entered judgment for the plaintiff, but the Court of Appeal restored the judgment in favour of the defendant vendor. Lord Esher, M.R., said that the purchase money had not been received from a purchaser obtained by the agent, but from another purchaser found by the vendor and not by the agent. Lord Justice Bowen pointed out that the purchase money was received from a purchaser substituted for the purchaser found by the agent, who failed to complete. Lord Justice Fry agreed that as the commission was to be paid " out of the purchase money," and the proposed purchaser made default in paying the balance, the commission had not been earned.

In *Green* v. *Lucas*, 1875, 33 L.T. 584, the defendant (1) had supplied valuations of property worth £37,000, and held on a ninety-nine years' lease which " contained no arbitrary or restrictive clauses, but only the usual covenants " ; (2) had agreed to pay the plaintiff 2 per cent. for procuring a loan of £20,000 on the above security. The plaintiff obtained an agreement for a loan from a provident institution, " subject to the title and all other questions proving to be satisfactory." It was then discovered that the lease, far from being one for ninety-nine years absolutely, contained a proviso for re-entry on conditions which depreciated its value considerably. The institution therefore refused the loan, but the court held that the plaintiff was entitled to the whole of the agreed commission.

In *Fisher* v. *Drewitt*, 1878, 27 W.R. 12, the defendant agreed : " In the event of your procuring the £2,000, or such other as I shall accept, I agree to pay you a commission of 2½ per cent. on any money received." The plaintiff introduced a building society, who offered to advance £1,620 on terms which the defendant accepted, but by reason of the defendant's refusal to accede to certain later requirements of the society, no money was in fact advanced. The court held that the plaintiff was entitled to commission on the sum which the society agreed to advance.

The cases show that the existence of a ready and willing and able purchaser often involves the consideration of what is a default or omission of a vendor—both difficult matters to embody in a satisfactory definition.

28th March. Your Contributor.

Books Received.

The Society of Incorporated Accountants and Auditors' Year Book (1928), comprising List of Members, Articles and Bye-laws. Crown 8vo. pp. (with General Index) 828 and xxii. Published by the Society at 50, Gresham-street, Bank, E.C.2. 3s. net.

The M.P. Journal. New Series. Vol. II, No. 3. March, 1928. The Mutual Property Insurance Company Ltd., 16-20, Charing Cross, S.W.1. 1d.

The Workmen's Compensation and Insurance Reports. Part I. 1928. Edited by G. T. WHITFIELD-HAYES, Barrister-at-Law. pp. viii and 116. London: Stevens & Sons, Ltd., 119 and 120, Chancery-lane, W.C.2; Sweet & Maxwell, Ltd., 2, Chancery-lane, W.C.2. Edinburgh: W. Green & Son, Ltd. Annual subscription, £2 post free.

A Digest of Law and Arbitration Cases. Reported from 1st January to 31st December, 1927. Demy 8vo. pp. xxxii and 366. 1928. The Estates Gazette, Ltd., 33-35, Kirby-street, Charles-street, Hatton Garden, E.C.1.

The Rating and Valuation Act, 1925. Fourth Series of Representations made to the Minister of Health by The Central Valuation Committee and circulated to Local Authorities. 1928. 56 pp. H.M. Stationery Office. 4d. net.

The Bombay Law Journal. Vol. V. No. 10. March, 1928. G. M. PANDYA. The Maneck Printing Press; Anand Nivas, Tribhuvan-road, Bombay 4. R. 1.8.0.

International Private Law in Scotland in the Sixteenth and Seventeenth Centuries. Visser Prize Essay in The University of Leiden, 1927. Originally in French. ANDREW DEWAR GIBB, LL.B., Advocate and Barrister-at-Law. Medium 8vo. pp. 43. W. Green & Son, Ltd., 2 and 4, Giles-street, Edinburgh. 4s. 6d. net.

War Compensation Court. Seventh Report. 1928. Medium 8vo. 64 pp. H.M. Stationery Office. 3s. 6d. net.

Prevention of Bribery. The News Sheet of The Bribery and Secret Commissions Prevention League, Incorporated. No. 146. 3rd March, 1928. 22, Buckingham Gate, S.W.1.

Les Contrats de la London Corn Trade Association (Vente CAF). GEORGES SCHWOB, Docteur en Droit. Super Royal 8vo. pp. 410. 1928. Paris: Libraire Arthur Rousseau et Cie, Editeurs, 14, Rue Soufflot et Rue Toullier, 13 Prix. 40 francs.

Rogers on Elections. Vol. II. Parliamentary Elections and Petitions, with Appendices of Statutes, Rules and Forms. Twentieth edition. C. WILLOUGHBY WILLIAMS, LL.M., Barrister-at-Law. Medium 8vo. pp. xvi and 592. Stevens and Sons, Ltd., Chancery-lane. 30s. net.

Criminal Appeal Cases, Vol. 20. Part 6. pp. 161–182. January, February and March, 1928. Sweet & Maxwell, Ltd. 7s. 6d. net.

Mines Department—Regulations and Orders Relating to Mines under the Coal Mines Act, 1911. 1927 Edition, including Orders up to 1st January, 1928. Medium 8vo. Stiff covers. pp. vi and 184 (with Index). H.M. Stationery Office. 1s. net.

MEDICAL JURISPRUDENCE.

The Council of the Royal Society of Arts give notice that the next award of the Swiney prize will be in January, 1929, the eighty-fifth anniversary of the testator's death. Dr. Swiney died in 1844, and in his will left the sum of £5,000 Consols to the Royal Society of Arts for the purpose of presenting a prize on every fifth anniversary of his death to the author of the best published work on jurisprudence. The prize is a cup, value £100, and money to the same amount.

The award is made jointly by the Royal Society of Arts and the Royal College of Physicians, and the prize is offered alternatively for medical and general jurisprudence.

NOTES OF CASES.

Court of Appeal.

No. 1.

Inland Revenue Commissioners *v.* **Parsons.**

Lord Hanworth, M.R., Sargant and Lawrence, L.JJ.

19th March.

REVENUE—SUPER-TAX—SCHEME FOR BENEFIT OF EMPLOYEES—DIVIDENDS FROM SHARES RECEIVED BY HOLDER AMOUNT APPLICABLE FOR PURCHASE OF SHARES FOR BENEFICIARIES.

The appellant, the Hon. Sir Charles Parsons, was the principal shareholder in a private company, holding a controlling interest in it, and up to the date of an arrangement made in 1918 over 90 per cent. of the shares, which were of the nominal value of £100 each. In 1918 and 1919, in order to give certain employees an interest in the company, he set aside blocks of shares for them, under a "statement of terms," by which the dividends were to be credited to the shares, so that, where the shares of any employee were £100 in credit, one share would be transferred to that employee. The employee might accelerate his ownership by paying for the share with his own money. Clause 8 of the terms were: "Until actual transfer to the employee, the shares will continue in the name and under the control of Sir Charles, and he may vote and act in respect of them as absolute owner, and without any restriction by reason of this arrangement." In assessing the appellant to super-tax, the dividends on these blocks of shares were included in his income. He contended that they were in fact impressed with a trust in favour of the employees, alternatively that they were an "annual payment" imposed upon and allowable as a deduction from his income within the scope of s. 27 of the Income Tax Act, 1918. Rowlatt, J., confirmed the assessment. The appellant appealed.

Lord HANWORTH, M.R., said that until transfer of the shares the appellant received the income as his own. No employee could say that any dividend was his, or direct the appellant how to deal with it. The transaction really amounted to this: Sir Charles Parsons had undertaken to make a gift to his employees from a block of shares. The gift would be completed when the nominal value of each share transferred had been received in dividends, but meanwhile, though the amount of the dividends was entered in a book in favour of the employees, the dividends were the dividends of Sir Charles and his right in respect of them was untrammelled. It seemed impossible to argue that he received those dividends as a trustee. Even if s. 27 of the Income Tax Act, 1918, could be relied upon, it did not affect the matter, because there was no trust affecting these dividends. There was a duty upon Sir Charles Parsons to transfer shares from time to time, but meanwhile the income was his income, free and unappropriated.

COUNSEL: *Latter*, K.C., and *Cyril King* for appellant; *The Attorney-General* (Sir Douglas Hogg, K.C.) and *R. P. Hills* for respondent.

SOLICITORS: *Crossman, Block, Matthews & Crossman*, for *Dees & Thompson*, Newcastle-on-Tyne; *The Solicitor of Inland Revenue.*

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

Green (Inspector of Taxes) *v.* **Gliksten & Son Limited.**

Lord Hanworth, M.R., Sargant and Lawrence, L.JJ.

21st March.

INSURANCE—LOSS OF STOCK BY FIRE—INSURANCE MONEY RECOVERED—WHETHER TRADING RECEIPT—INCOME TAX ACT, 1918, 8 & 9 Geo. 5, c. 40, Sched. D, Case I—RULES APPLICABLE TO CASES I AND II, r. 3 (*k*).

Gliksten & Son Limited a company registered in 1905, were timber merchants, and in 1921 a large quantity of their timber was destroyed by fire. In respect of this loss they recovered

£477,838 from various insurance companies. The Crown contended that they were liable to bring this sum into their accounts for assessment to income tax, as being a trading receipt for the year, as if the timber had been sold for that figure. The company alleged that that sum represented the replacement value, owing to a boom in timber then prevailing, but that the value in their books, representing the purchase price of the timber, was much less, and was the proper sum to be brought into account. They contended that their business was not to deal in fires, and that the receipt of the £477,838 was not a trading receipt. The Special Commissioners took that view, but Rowlatt, J., reversed their decision. Messrs. Gliksten appealed. The Court dismissed the appeal without calling upon the Crown to argue.

Lord HANWORTH, M.R., said the appellants' claim was that they did not deal in fires, and so the insurance money was an indemnity for the amount standing in their books against the timber, the balance being a sort of windfall, like a nugget of gold found on their premises, something which did not come into their accounts for income tax. The duty to insure was, however, part of the ordinary duty of a trader, and the value of goods destroyed might be recovered in lieu of the price which would have been received if they had been sold. The appellants had relied upon r. 3 (*k*) of the Rules applicable to Cases I and II of Sched. D of the Income Tax Act, 1918, but he (his Lordship) could not see that that determined the matter. The fact was that the appellants had a fixed capital and a circulating capital. Part of the latter had been invested in this timber; instead of being sold it was burnt, and this amount of £477,838 was really a sum received to replace the circulating capital which had been invested; it was therefore an ordinary receipt and must be brought into account at its true value.

Lords Justices SARGANT and LAWRENCE gave judgment to like effect.

COUNSEL: *Maugham*, K.C., *Latter*, K.C., and *Cyril King* for appellants; *The Attorney-General* (Sir Douglas Hogg, K.C.) and *R. P. Hills* for the Crown.

SOLICITORS: *Ward, Perks & Terry; Solicitor of Inland Revenue.*

[Reported by G. T. WHITFIELD-HAYES, Esq., Barrister-at-Law.]

High Court—Chancery Division.

The Royal London Mutual Insurance Society Ltd. *v.* Bassett.

Tomlin, J. 7th March.

LIFE INSURANCE—POLICY—SUICIDE—CONDITION AGAINST—EXCEPTION OF *bona fide* INTERESTS OF THIRD PARTIES—ASSIGNMENT TO ASSURANCE COMPANY.

This was an action against the executrix of A.S.D., who committed suicide on 9th July, 1927, seeking to enforce their security. The facts were as follows: By a mortgage dated 1st February, 1927, A.S.D. demised to the plaintiffs a leasehold house and assigned to them a policy of assurance on his life which had been effected by him with the plaintiffs as a security for a loan to him by the plaintiffs of £850 repayable with interest at 6 per cent. per annum. The plaintiffs agreed by the policy to pay the sum of £900 to A.S.D. or his personal representatives or permitted assigns. One condition of the policy provided as follows: "Suicides.—The policy shall be void if the life assured dies by suicide or by the hands of justice. In any such case the directors may allow to the policy-holder such part of the sum assured as they shall think fit and the policy shall remain in force to the extent of the pecuniary interest of third parties *bona fide* acquired for valuable consideration (satisfactory proof of which will be required), provided notice thereof in writing shall have been received and admitted by the directors at least one month prior to the date of death." The executrix by her counter-claim claimed payment of the difference between the said sum of £900 and the amount due to the plaintiffs under the mortgage, and contended that the plaintiffs, having by virtue of the above-mentioned transactions acquired a different status from that which they had under the contract between themselves and A.S.D. contained in the policy, were "third parties" within the meaning of those words as used in condition 5. The plaintiffs contended that the policy was void and that they were not third parties. One of the clauses in the mortgage provided that the plaintiffs were to satisfy themselves primarily out of the policy moneys, and that the leasehold house was to that extent to be discharged from the charge.

TOMLIN, J., after stating the facts, said: The only point which calls for a report is on the construction of the condition. If the contention of the company is right, they can enforce their charge against the leasehold house and take no account of the policy as being wholly void. If they are wrong, the policy, to the extent of the money due under the mortgage, may be enforced, and by virtue of one of the clauses in the mortgage the company will have to satisfy themselves primarily out of the policy moneys and the leasehold house will be freed from the charge. *White* v. *The British Empire Mutual Life Assurance Company*, 1868, L.R. 7 Eq. 394, on which the defendant relies, stands as no authority for a clause containing different language. The clause in the present case may have been the result of an attempt on the part of the insurance company to exclude themselves, and in my view they have succeeded. There being, therefore, apparently no authority to support the opposite contention, in my judgment the expression "third parties" does not include the assurers. Consequently the policy is void, and they are entitled to enforce their security against the other property comprised in the mortgage.

COUNSEL: *Gavin Simonds*, K.C., and *E. E. H. Brydges; G. B. Hurst*, K.C., and *A. T. James.*

SOLICITORS: *Smith & Hudson; Miles & Morley*, for *H. M. Williams*, Newport, Monmouth.

[Reported by L. M. MAY, Esq., Barrister-at-Law.]

High Court—King's Bench Division

Hansford *v.* London Express Newspaper, Ltd.

Rowlatt, J. 5th March.

INSURANCE—FREE BENEFIT—CYCLIST KILLED—PERSONAL REPRESENTATIVE'S CLAIM—BICYCLE A "VEHICLE" WITHIN THE INSURANCE SCHEME.

Special case stated by an arbitrator.

The claimant, administratrix of J. E. Hansford, who, when walking and pushing his bicycle, was run down by a motor lorry and killed on the 13th December, 1926, claimed to be entitled as the deceased's personal representative to an accident benefit under the "Daily Express" great free insurance scheme. All requirements as to the claim, the correct period in which it had to be brought, and the proof of identity had been complied with. After hearing the contentions of both parties, the arbitrator held that the deceased at the time of the accident was a pedestrian within the meaning of cl. 6 of the insurance scheme, and also that he was "in charge of a vehicle" within cl. 7. The question for the opinion of the court was whether a bicycle was a "vehicle" within the meaning of cl. 7. By cl. 6 of the insurance scheme: "Accidents in the streets," there was payable, "£250 in case of death of the reader if he or she shall while a pedestrian . . . in a thoroughfare open for use by the public be killed by accidental impact with a moving vehicle." By cl. 7: "£3 per week . . . should such accident render the reader temporarily and totally unable to follow his or her usual vocation. Provided as regards (6) and (7) that the reader be not at the time of the accident in charge of any vehicle or engaged in loading or unloading or attending to any vehicle . . ."

ROWLATT, J., held that the word "vehicle" included a bicycle. He said that reading the provisions of the policy together he could see no reason for limiting the word vehicle. He held that the award of the arbitrator was right and dismissed the appeal.

COUNSEL: *Tristram Beresford*, for the claimant; *Malcolm Hilbery*, for the respondents.

SOLICITORS: *Leonard Bingham & Sharp; Dennes, Lamb and Pearce Gould.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Sir William Mills *v.* **Jones (Inspector of Taxes).**

Rowlatt, J. 6th March.

REVENUE—INCOME TAX—AWARD OF ROYAL COMMISSION ON AWARDS TO INVENTORS—TAXABLE UNDER SCHEDULE D OF THE INCOME TAX ACT, 1918, 8 & 9 Geo. 5, c. 40.

Appeal from a decision of the General Commissioners of Income tax.

The Royal Commission on Awards to Inventors awarded on the 11th March, 1921, a sum of £37,000 in respect of all user, past, present, and future, by the Government, of Mills bombs. The present appellant, Sir William Mills, effected certain improvements in a hand grenade known as the Roland bomb, and as patentee of the improved type, the Mills bomb, 75,131,962 of which were manufactured in the war, he received £27,750 out of the £37,000 awarded, the balance going to other claimants connected with the Roland bomb, invented in Belgium. No deduction in respect of income tax was made from those sums on payment. In July, 1926, the inspector of taxes surcharged the appellant in £24,000 for the year ended the 5th April, 1921, and in £3,750 for the year ended the 5th April, 1922. On appeal to the General Commissioners it was held that the sums awarded were "annual profits or gains" chargeable to income tax under Sched. D of the Income Tax Act, 1918, and they confirmed the certificates of surcharge. Sir William Mills appealed.

ROWLATT, J., said that although not quite so simple as the case of *Constantinesco* v. *The King*, 43 T.L.R. 727, that case governed the present one, and the appeal must be dismissed.

COUNSEL: *Jowitt*, K.C., and *J. F. Eales*, for the appellant; *The Attorney-General* (Sir Douglas Hogg, K.C.) and *R. P. Hills*, for the Crown; *Arthur Henderson*, a watching brief.

SOLICITORS: *Nash, Field & Co.*, for *Docker, Hosgood & Co.*, Birmingham; *Solicitor for Inland Revenue*; *Kenneth Brown, Baker, Baker.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Ashby-de-la-Zouch Guardians *v.* **Summers and Another.**

Lord Hewart, C.J., Salter, J., Roche, J. 6th March.

GUARDIANS—RELIEF GRANTED—AS LOAN—FAILURE TO REPAY—SUMMONS—DISMISSED—JURISDICTION—TIME LIMIT FOR PROCEEDINGS—APPEAL—SUMMARY JURISDICTION ACT, 1848, 11 & 12 Vict., c. 43, s. 11.

Appeal from a decision of the Leicestershire justices.

Between the 5th June and the 16th October, 1926, the respondent Summers, a miner, obtained relief on loan to the amount of £5 3s. 6d. from the appellants. He repaid 3s. by separate instalments, the last being on the 9th July, 1927, leaving a balance of £5 0s. 6d. The appellants had made application in writing for repayment on the 10th February, 1927. After unsuccessful attempts to obtain the money an application and information was preferred under s. 59 of the Poor Law Amendment Act, 1834, by the relieving officer of the guardians against the respondent Summers and the Meacham Collieries, Limited, his employers, to show cause why any wages then due or which might from time to time become due from the company to Summers should not be paid to the guardians in discharge of his debt of £5 0s. 6d. Applications for summonses against the respondents were granted on the 6th August, 1927, and they were heard on the 20th August. The justices dismissed them on the ground that, the proceedings not being begun within six months from the date of the advancement of the last instalment of the loan, they had no jurisdiction.

Lord HEWART, C.J., after stating that in his opinion the application was a "complaint" within s. 11 of the Summary Jurisdiction Act, 1848, said that the question was whether the proceedings were begun within the statutory period therein provided. If the time ran from the date of the first demand in writing then the application was in time. In his opinion the proceedings were in time, and the appeal should be allowed.

SALTER, J., and ROCHE, J., delivered judgments to the same effect.

COUNSEL: *Maurice Healy* for the appellants; *D. F. Brundrit* for the Meacham Collieries, Limited; respondent Summers not represented.

SOLICITORS: *Andrew, Wood, Purves & Sutton*, for *Fishers*, Ashby-de-la-Zouch; *Corbin, Greener & Cook.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Sinanide *v.* **La Maison Kosmeo.** Humphreys, J. 8th March.

COPYRIGHT — INFRINGEMENT OF ADVERTISEMENT SLOGAN — INJUNCTION—NOMINAL DAMAGES—COPYRIGHT ACT, 1911, 1 & 2 Geo. 5, c. 46.

Both parties to this action specialised in beauty treatment, and, since 1925, the plaintiff, who advertised extensively, had, with reference to good looks or a youthful appearance, described them as being a "social necessity, not a luxury." The defendant, in connexion with his business, advertised in the *Illustrated Sporting and Dramatic News* of the 29th May, 1926, that "A youthful appearance is a social necessity." The plaintiff claimed the copyright in his advertisement as regarded the words "a social necessity, not a luxury."

HUMPHREYS, J., said that the Copyright Act, 1911, provided in s. 1 that there should be a copyright in every original literary work, and that an advertisement might be an original literary work was laid down in *Maple and Co.* v. *Junior Army and Navy Stores*, 26 SOL. J. 561; 21 Ch.D. 369. The phrase was rather an arresting one and it did, in his opinion, come within the language of the Copyright Act. He preferred to draw a distinction between stealing and copying a copyright; the breach might be unconscious. The plaintiff was granted an injunction, nominal damages of 1s., and costs.

COUNSEL: *H. St. John Field* for the plaintiff; *Cartwright Sharp* for the defendant.

SOLICITORS: *H. S. Wright & Webb; Beardall & Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Hewett and Others *v.* **Essex County Council.**

Lord Hewart, C.J., Salter, J., Roche, J. 8th March.

LOCAL GOVERNMENT—BRIDGE CONSTRUCTED OVER RIVER—NAVIGATION HINDERED—VALUE OF WHARF DEPRECIATED—COMPENSATION—ACQUISITION OF LAND (COMPENSATION) ACT, 1919, 9 & 10 Geo. 5, c. 57.

Special case stated by an arbitrator under the Acquisition of Land (Compensation) Act, 1919.

The respondents, the Essex County Council, under an empowering Act of 1923, constructed a bridge over the River Roding, and thereby partially obstructed the free navigation of the river, and interfered with access of sea-going vessels and other craft to the claimants' wharf, known as Hewett's Wharf, the freehold of which was in two of the claimants. In respect of the diminution in value of the wharf and the damage done to their business resulting from the erection of the bridge, the claimants, under various heads, claimed £67,909 10s. as compensation. The arbitrator awarded them

£1,400 in respect of the depreciation of the freehold value of the wharf, for which they had claimed £8,000, and £3,750 for depreciation of business. The question for the opinion of the court was whether the claimants were entitled to recover on their claims under depreciation of business.

Lord HEWART, C.J., giving the judgment of the court, said that they were of the opinion that the claimants were not entitled to compensation in respect of their claims detailed under depreciation of business, and they would, therefore, receive £1,400 as compensation for the depreciation of the freehold value.

COUNSEL: *Sir Lynden Macassey*, K.C., and *Tristram Beresford*, for the claimants; *The Solicitor-General* (Sir Thomas Inskip, K.C.), and *W. Bowstead*, for the respondents.

SOLICITORS: *Wilson & Blew; The Treasury Solicitor.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Etchells, Congdon & Muir, Ltd. *v.* **Eagle, Star and British Dominions Insurance Co. Ltd.** Mackinnon, J. 12th March.

INSURANCE—ACCIDENTS TO EMPLOYEES—POLICY TO COVER CLAIMS—WAGE BASIS FOR PREMIUMS.

Case stated by an arbitrator. The claimants, in 1917, took out a policy with the respondents to cover their liability in respect of claims consequent upon accidents to anyone in their direct employment. The premium payable was based upon the claimants' annual wage bill. On the 26th January, 1926, during the course of the construction of an electric lift by the claimants for a firm of builders, one Milligan, an unskilled labourer, supplied by the building firm under the contract, was injured in an accident. The defence to his claim for damages against the claimants was undertaken by the respondents upon receipt of the writ from the claimants. Just before the hearing, however, the respondents repudiated liability on discovering that Milligan's wages had been paid by the firm of builders, and not by the claimants, and they contended that he was not covered by the policy. Milligan obtained £265 and costs against the claimants, and the question whether the claimants could recover from the respondents was referred to arbitration.

MACKINNON, J., said that two points were taken: (1) that the claim was not covered by the policy; (2) that the action of the respondents in defending Milligan's claim did not amount to an estoppel. On the facts Milligan had never been in the claimants' direct employment, and no premium had been paid in respect of his wages, so the claim was not covered by the policy. Secondly, there could be no estoppel unless the party to be estopped had acted with full knowledge of the facts. In this case there was nothing to show that the respondents knew that Milligan's wages were not paid by the claimants. The respondents were not liable. Claimants to pay the costs of both the arbitration and this case.

COUNSEL: *K. E. Shelley*, for the claimants; *Cyril Atkinson*, K.C., and *N. J. Laski*, for the respondents.

SOLICITORS: *Risque, Robson & Yates*, Manchester; *James Chapman & Co.*, Manchester.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Societies.

The Inns of Court.

On Thursday, the 29th ult., the Masters of the Bench of the Middle Temple, Master Treasurer (the Marquess of Reading) presiding, entertained at dinner in their historic hall the Masters of the Bench of Lincoln's Inn, in recognition of the time-honoured friendship between these two learned societies. This alliance is analogous to that which links the two societies of Gray's Inn and the Inner Temple.

The antiquity of these friendships between the Inns of Court is remarkable, for, although the earliest records of the Inns have not survived, it is at least known from the famous Black Books of Lincoln's Inn that as early as 1442 a special intimacy existed between the members of that society and the Middle Temple, which found expression from time to time in mutual hospitalities. To the revival of this pleasant custom by the Treasurer and Masters of the Bench of Lincoln's Inn during 1926 the dinner held that evening was the response of the Middle Temple Society.

The following Benchers were present from Lincoln's Inn:—

The Treasurer (Sir T. R. Hughes, K.C.), Sir Edward Clarke, K.C., Lord Wrenbury, Viscount Haldane, Sir Alfred Hopkinson, K.C., M.P., Mr. Justice Eve, Lord Justice Lawrence, Lord Danesfort, K.C., Mr. C. E. E. Jenkins, K.C., Mr. R. F. Norton, K.C., Mr. N. Micklem, K.C., Lord Justice Sargant, Sir R. F. Scott, Mr. Justice Romer, Lord Alness, Sir F. M. S. Cassel, K.C., Mr. E. L. Thomas, K.C., Mr. R. E. Whitehead, K.C., Mr. Justice Clauson, Sir M. M. Macnaghten, K.C., M.P., Mr. E. P. Hewitt, K.C., Mr. Theobald Mathew, Sir J. W. Greig, K.C., Mr. Justice Tomlin, Mr. C. A. James, K.C., Mr. R. E. L. Vaughan Williams, K.C., Mr. H. M. Giveen, Sir J. H. Cunliffe, K.C., M.P.

Mr. C. Atkinson, K.C., M.P., Sir Malcolm McIlwraith, K.C., Sir G. R. Lowndes, K.C., Mr. Owen Thompson, K.C., Mr. J. F. W. Galbraith, K.C., M.P., Mr. A. F. C. C. Luxmoore, K.C., Mr. A. Adams, Mr. A. R. Kennedy, K.C., M.P., Mr. F. T. Barrington-Ward, K.C., Mr. J. W. Manning, K.C., Mr. H. C. Preston, K.C., Judge Hildyard, K.C., Mr. G. B. Hurst, K.C., M.P., Mr. E. P. Clarke, Mr. W. J. Jeeves, K.C., Mr. W. E. Tyldesley Jones, K.C., Judge Sturges, K.C., Mr. A. M. Latter, K.C., Mr. A. F. Topham, K.C., Judge Roope Reeve, K.C., Mr. C. S. Crossman, Mr. W. M. Hunt, Mr. Tom Eastham, K.C., Sir B. L. Cherry, Mr. J. H. Stamp, Mr. A. L. Ellis, and the Under-Treasurer (Mr. R. P. P. Rowe).

The following Benchers of the Middle Temple were present, in addition to the Treasurer:—

Viscount Mersey, Mr. W. English Harrison, K.C., Sir Robert A. McCall, K.C., Lord Carson, Sir Robert Wallace, K.C., Mr. Justice Astbury, Sir Ellis Hume-Williams, K.C., M.P., Mr. B. C. Aspinall, K.C., Lord Justice Scrutton, Lord Shaw of Dunfermline, Mr. Arthur Powell, K.C., Judge Sir Alfred Tobin, K.C., Mr. W. J. Waugh, K.C., Mr. Justice Salter, Mr. L. De Gruyther, K.C., Mr. E. A. Mitchell-Innes, K.C., Mr. Holman Gregory, K.C., Mr. St. J. G. Micklethwait, K.C., Sir Lynden Macassey, K.C., Sir Cecil J. B. Hurst, K.C., Dr. H. L. Hart, K.C., the Hon. S. O. Henn-Collins, Mr. J. B. Matthews, K.C., Mr. A. M. Dunne, K.C., Sir T. S. Cautley, K.C., M.P., Dr J. M. Gover, K.C., Mr. J. Bruce Williamson, Mr. H. C. S. Dumas, Mr. A. Neilson, K.C., Mr. S. J. Bevan, K.C., Mr. A. M. Sullivan, K.C., Mr. T. Artemus Jones, K.C., Sir Henry Curtis Bennett, K.C., Mr. W. N. Raeburn, K.C., Mr. W. E. Vernon and Mr. A. T. Miller.

Solicitors' Benevolent Association.

The monthly meeting of the directors of this Association was held at The Law Society's Hall, Chancery Lane, on the 14th ult., Mr. Charles E. Barry (Bristol) in the chair. The other directors present were Messrs. E. E. Bird, A. C. Borlase (Brighton), W. F. Cunliffe, T. S. Curtis, A. G. Gibson, C. G. May, R. W. Poole, J. F. Rowlatt, M. A. Tweedie and A. B. Urmston (Maidstone). £1,465 was distributed in grants of relief; thirty new members were admitted; Mr. Henry White (Winchester) was elected a director, and other general business was transacted.

The City of London Solicitors' Company's Prize.

The Court of the City of London Solicitors' Company has arranged with the Council of The Law Society to provide a prize of the value of twenty-five guineas, to be known as "The City of London Solicitors' Company's Prize."

The prize will be presented by the company on a certificate of The Law Society to the student under the age of twenty-seven years on the date on which he sat for the Examination (being an articled clerk to a solicitor practising within a radius of three-quarters of a mile of the Bank of England) whose answers to the papers in the Solicitors' Final Examination on Equity and Common Law and Bankruptcy, set at the three Examinations in any one year, shall have been adjudged the highest in merit, liberty being reserved to withhold the prize, if in the opinion of The Law Society no papers are deemed of sufficient merit.

An announcement of the prize will be included in the July Final Examination Prospectus issued by The Law Society, and it will be possible, therefore, for the prize to be awarded to a candidate at the July or November Final Examination.

The Solicitors' Law Stationery Society, Limited.

The thirty-ninth Annual General Meeting of the Society was held at Oyez House, 104–7, Fetter Lane, London, on Tuesday, the 3rd inst. (Mr. Robert Chancellor Nesbitt in the chair), when a dividend at the rate of 10 per cent. per annum in respect of the year 1927 was declared. A report of the proceedings will appear in our next issue.

High Court of Justice.

EASTER VACATION, 1928.

NOTICE.

There will be no sitting in court during the Easter Vacation.

During the Easter Vacation all applications "which may require to be immediately or promptly heard," are to be made to The Honourable Mr. Justice Clauson.

The Honourable Mr. Justice Clauson will act as Vacation Judge from Thursday, 5th April to Monday, 16th April, both days inclusive. His Lordship will sit in King's Bench Judges' Chambers on Thursday, 12th April, at half-past 10. On other days within the above period applications in urgent matters may be made to his Lordship, by post, or, if necessary, personally.

When applications are made by post the brief of counsel should be sent to the Judge, by post or rail prepaid, accompanied by office copies of the affidavits in support of the application, and also by a minute, on a separate sheet of paper, signed by Counsel, of the order he may consider the applicant entitled to, and also an envelope, sufficiently stamped, capable of receiving the papers, addressed as follows: "Chancery Official Letter: To the Registrar in Vacation, Chancery Registrars' Chambers, Royal Courts of Justice, London, W.C.2."

On applications for injunctions, in addition to the above, a copy of the writ and a certificate of writ issued, must also be sent.

The papers sent to the Judge will be returned to the Registrar.

The address of the Vacation Judge can be obtained on application at the Chancery Registrars' Chambers, Room 136, Royal Courts of Justice.

Chancery Registrars' Chambers,
Royal Courts of Justice,
April, 1928.

Rules and Orders.

THE COUNTY COURT BANKRUPTCY AND COMPANIES JURISDICTION (SOUTHEND) ORDER, 1928.

DATED 6th FEBRUARY, 1928.

I, George Viscount Cave, Lord High Chancellor of Great Britain by virtue of the powers vested in me by section 96 of the Bankruptcy Act, 1914,(*) section 131 of the Companies (Consolidation) Act, 1908,(†) and Rule 127 of the Bankruptcy Rules, 1915,(‡) and of all other powers enabling me in this behalf, Do hereby order as follows:—

1. The County Court of Essex, held at Southend, shall cease to be excluded from having jurisdiction in bankruptcy and in proceedings under the Companies (Consolidation) Act, 1908, and the district of the said Court shall cease to be attached to the County Court of Essex held at Chelmsford.

2. For the purpose of jurisdiction in bankruptcy and in proceedings under the Companies (Consolidation) Act, 1908, the district of the County Court of Essex held at Grays Thurrock shall cease to be attached to the County Court of Essex held at Chelmsford and shall be attached to the said Court held at Southend.

3. The said Court held at Chelmsford shall have jurisdiction to deal with any proceedings which may be pending in that Court when this Order comes into operation.

4. This Order may be cited as the County Court Bankruptcy and Companies Jurisdiction (Southend) Order, 1928, and shall come into operation on the 1st day of April, 1928, and the County Courts (Bankruptcy and Companies Winding-Up) Jurisdiction Order, 1899,(§) as amended, shall have effect as further amended by this Order.

Dated the 6th day of February, 1928.

Cave, C.

* 4–5 G. 5, c. 59. † 8 E. 7, c. 69. ‡ S.R. & O. 1914 (No. 1824) I, p. 41.
§ S.R. & O. Rev. 1904, III, County Court, E., p. 78 (1899, No. 351).

Legal Notes and News.

Resignations, &c.

Dr. HENRY BRIERLEY, Registrar of Wigan County Court, and also of the County Courts of St. Helens and Widnes, is retiring at the age of eighty-one after filling the office of County Court Registrar for forty years.

Mr. FREDERICK FERMHOUGH, Solicitor Clerk to the Brentford and Chiswick Urban District Council has withdrawn his resignation.

Sir JOHN HUNT, O.B.E., Town Clerk of Westminster, who has held office since the formation of the City Council, intends to retire at the end of the year.

Mr. W. S. SIMEY, B.A. (Oxon), has resigned the appointment of Assistant Solicitor to the Portsmouth Corporation, to take up private practice in Exeter.

Wills and Bequests.

Mr. Jessop Henry Fletcher Hulton, solicitor, of First-avenue, Hove, for many years in practice at Bolton, who died on 2nd January, aged seventy-nine, left estate of the gross value of £39,237. He left £100 to the Rector and Churchwardens of Emberton, Bucks, for a Mr. and Mrs. Jessop Hulton Coal Fund, upon trust for investment and to apply the income, firstly, in keeping his grave in order, and the balance in the purchase of coal and bread for distribution on Christmas Eve amongst the poor of Emberton and Petsoe, irrespective of their religious belief, adding: "a few flowers placed upon our grave at Easter or Whitsuntide by any recipient would be a touching acknowledgment."

Mr. James George Wood, of New-square, Lincoln's Inn and, Sutherland-avenue, N.W., barrister-at-law, a Bencher of Lincoln's Inn, who died on 11th January, aged eighty-four, left estate of the gross value of £75,192, with net personalty £64,315. He left £150 to his clerk, Henry William North, if with him at the time of his death.

Mr. William Frederick Verrall, solicitor (74), of The Hollies, Worthing, left estate of the gross value of £59,215.

Sir William Watson Rutherford, Bt., solicitor, of Castle-street, Liverpool, and Cannon-street, London, E.C., head of Messrs. Rutherfords, solicitors, London and Liverpool, who died on 3rd December, aged seventy-four, left property of the value of £16,988. He left £250 to his managing clerk, Andrew Findlay.

TEMPERANCE PERMANENT BUILDING SOCIETY.

The general meeting of this Society was held at the Memorial Hall, when the Chairman, Mr. William Bingham, J.P., referred to the expansion of the business of the society which had now been carrying on its work for nearly three-quarters of a century. During 1927 the sum of £772,000 was advanced on house and shop property, in the majority of cases to occupying purchasers, bringing the mortgage assets up to nearly £3,000,000. There was a net increase in the share capital of £450,000 after allowing for withdrawals, and the total assets, which now stand at £3,268,500, show an increase of £490,000, whilst £34,500 was added to the reserve fund, which, amounting to £364,000, is stated to be the largest reserve in proportion to liabilities of any building society in the United Kingdom. A dividend of 5½ per cent. free from income tax was paid in January on the original shares, while the distribution on shares of subsequent issues with the bonus added was 5 per cent., also free from income tax.

RAILWAY RATES TRIBUNAL AND "EXCEPTIONAL RATES."

The Railway Rates Tribunal—Mr. W. B. Clode, K.C., Mr. W. A. Jepson, and Mr. G. C. Locket—granted an application by railway companies in regard to new exceptional rates submitted for approval. The application referred to two classes of rates. Those in the first category were isolated rates between different points for different classes of traffic. The London Midland and Scottish, the London and North Eastern, and the Great Western Railways asked for powers to make reductions below the standard rates to meet competition by road or water in different localities. Those in the second category were rates for traffic in relation to the cotton industry in the Liverpool and Manchester area; and the application was made by the London Midland and Scottish and the London and North Eastern Railways jointly.

LAND SALE 7,000 YEARS AGO.

The oldest letter in the world will be on show at the exhibition of antiques which the British Antique Dealers' Association is holding in the Grafton Galleries in May. Dated 5,000 B.C., the letter refers to a deed of purchase or hire of a field by one Annini from Simti-Ha. It is written in cuneiform characters on fired clay, and, when found at Ur, was enclosed in a clay envelope. The writer lived in the dynasty of Larza, which was the first dynasty of Babylon.

DINNER TO MR. JUSTICE HUMPHREYS.

The past and present members of the Central Criminal Court Bar Mess entertained Mr. Justice Humphreys (formerly Senior Treasury Counsel and Chairman of the Bar Mess) at dinner at the Connaught Rooms on Wednesday, the 28th ult., on his appointment as one of the judges of the High Court. He was also presented with a piece of plate. Mr. Percival Clarke (Senior Treasury Counsel) was in the chair, and there were also present Lady Humphreys, Mr. Christmas Humphreys, Mr. Justice Avory, Mr. Justice Hawke, the Hon. Sir Plunket Barton, K.C., Sir A. H. Bodkin, Sir Guy Stephenson, Sir Leonard Kershaw, Sir Herbert Austin, Sir David Kyd, Sir Henry Curtis-Bennett, K.C., Mr. J. D. Cassels, K.C., M.P., Mr. Roland Oliver, K.C., Mr. J. B. Melville, K.C., Mr. C. W. Kent, K.C., Mr. J. Bowen Davies, K.C., Mr. Eustace Fulton, Mr. H. D. Roome, Mr. G. D. Roberts, Mr. Gerald Dodson, Mr. J. B. McClure, Mr. R. J. Blackham, Mr. A. C. F. Boulton, Mr. J. F. Eastwood, Mr. F. D. Levy, Mr. E. C. P. Boyd, Mr. R. F. Graham-Campbell, Mr. A. E. Gill, Mr. V. R. M. Gattie, Mr. Ronald Powell, Mr. A. M. Latham, Mr. F. Hinde, Mr. Walter Frampton, Mr. T. E. Morris, Mr. H. J. Turrell, Mr. J. P. Valetta, Mr. H. C. Bickmore, Mr. St. J. McDonald, Mr. St. J. Hutchinson, Mr. E. A. Hawke, Mr. Marston Garsia, Mr. S. T. T. James, Mr. G. G. Raphael, Mr. Beaufoi Moore, the Hon. Edward Duke, Mr. C. Samman, Mr. H. T. Wright (hon. treasurer), and Mr. Albert Crew (secretary).

DUBLIN EDITOR'S ALLEGED CONTEMPT OF COURT.

In the Dublin High Court recently, before Mr. Justice Sullivan, Mr. Justice Hanna, and Mr. Justice Meredith, judgment was delivered in the case of the Attorney-General of the Irish Free State against Mr. Sean T. O'Kelly, Editor of the *Nation* newspaper, in respect of an article which appeared in that publication entitled "Judge's Insolence to Jurors." The Attorney-General had applied for an order of attachment against Mr. O'Kelly, whose counsel had argued that as it was a criminal charge the High Court had no jurisdiction to try the defendant without a jury. By a majority judgment the court held that Mr. O'Kelly had been guilty of contempt of court and he was fined £100 and ordered to pay costs. A stay of execution was granted pending an appeal. Mr. Justice Sullivan, delivering judgment, said that Art. 72 of the Irish Free State Constitution, on which Mr. O'Kelly's counsel relied, was not intended to, and did not, affect the jurisdiction of the High Court to deal summarily with a case of contempt. Mr. Justice Meredith dissented.

RATING OF LICENSED PREMISES.

The County Valuers' Association met recently at the Surveyors' Institution, the county valuers for Suffolk, Shropshire, Durham, Devon, Cornwall, Wiltshire, Surrey, Middlesex, Glamorgan, Northumberland, Kent, Somerset, the West Riding of Yorkshire and Berkshire being present.

The valuation of licensed properties was discussed, having regard to the recent decision in the *Knaresborough Case*, and it was resolved that: "In the opinion of the County Valuers' Association the decision in *Grant* v. *Knaresborough* does not prevent a valuer, in assessing premises to which a licence is attached, having regard to the business that has been done in the past, and does not override the principles laid down in *Cartwright* v. *Sculcoates*."

PROTECTION OF LAPWINGS.

The Home Office calls attention to the Protection of Lapwings Act, 1928, which has now received the Royal Assent, and is in force. The Act prohibits absolutely and at all times the sale or possession for sale for human consumption of lapwings' eggs and also of the bird itself between 1st March and 31st August in each year. It applies equally to native and to imported eggs and birds.

VALUATIONS FOR INSURANCE.—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs, furniture, works of art, bric-a-brac a speciality.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 12th April, 1928.

	Middle Price 3rd April	Interest Yield.			Yield with Redemption.		
English Government Securities.		£	s.	d.	£	s.	d.
Consols 4% 1957 or after	86¾	4	12	6	—		
Consols 2½%	55¾	4	10	0	—		
War Loan 5% 1929-47	102⅝	4	18	0	4	18	9
War Loan 4½% 1925-45	97¾	4	12	0	4	16	6
War Loan 4% (Tax free) 1929-42	100	4	0	0	4	0	0
Funding 4% Loan 1960-1990	89xd	4	10	0	4	14	0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	93	4	6	0	4	7	0
Conversion 4½% Loan 1940-44	97¾	4	12	0	4	16	0
Conversion 3½% Loan 1961	77⅛	4	11	0	—		
Local Loans 3% Stock 1921 or after	64½	4	13	0	—		
Bank Stock	257	4	13	6	—		
India 4½% 1950-55	94	4	15	6	5	0	0
India 3½%	70½	4	19	0	—		
India 3%	60½	4	19	0	—		
Sudan 4½% 1939-73	95	4	15	0	4	17	0
Sudan 4% 1974	84	4	15	0	4	17	0
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 19 years)	84xd	3	13	0	4	6	0
Colonial Securities.							
Canada 3% 1938	86	3	12	0	4	18	0
Cape of Good Hope 4% 1916-36	93	4	6	0	5	0	6
Cape of Good Hope 3½% 1929-49	82	4	6	0	5	0	0
Commonwealth of Australia 5% 1945-75	99	5	1	0	5	2	6
Gold Coast 4½% 1956	94	4	15	6	4	17	6
Jamaica 4½% 1941-71	93	4	16	0	4	18	6
Natal 4% 1937	93	4	5	0	5	0	0
New South Wales 4½% 1935-45	91	4	19	0	5	7	0
New South Wales 5% 1945-65	99	5	1	0	5	3	0
New Zealand 4½% 1945	96	4	13	0	4	17	6
New Zealand 5% 1946	103	4	17	0	4	16	6
Queensland 5% 1940-60	97	5	3	0	5	3	0
South Africa 5% 1945-75	103	4	17	6	5	0	0
South Australia 5% 1945-75	97½	5	2	6	5	0	0
Tasmania 5% 1945-75	101	4	19	0	5	0	0
Victoria 5% 1945-75	99	5	1	0	5	0	0
West Australia 5% 1945-75	99	5	1	0	5	2	0
Corporation Stocks.							
Birmingham 3% on or after 1947 or at option of Corporation	63	4	15	6	—		
Birmingham 5% 1946–56	102	4	18	0	4	17	0
Cardiff 5% 1945–65	101¼	4	19	0	4	18	0
Croydon 3% 1940–60	70	4	5	6	5	0	0
Hull 3½% 1925–55	78	4	10	0	5	0	0
Liverpool 3½% Redeemable at option of Corporation	74	4	14	6	5	0	0
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	54½	4	13	6	—		
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	65	4	12	6	—		
Manchester 3% on or after 1941	64	4	13	6	—		
Metropolitan Water Board 3% 'A' 1963–2003	64	4	13	0	4	17	0
Metropolitan Water Board 3% 'B' 1934–2003	65½	4	12	6	4	15	6
Middlesex C. C. 3½% 1927–47	83	4	5	6	4	17	0
Newcastle 3½% Irredeemable	72	4	17	0	—		
Nottingham 3% Irredeemable	60xd	4	15	6	—		
Stockton 5% 1946–66	102	4	18	0	4	19	0
Wolverhampton 5% 1946–56	101xd	4	19	0	5	0	0
English Railway Prior Charges.							
Gt. Western Rly. 4% Debenture	82	4	17	6	—		
Gt. Western Rly. 5% Rent Charge	100	5	0	0	—		
Gt. Western Rly. 5% Preference	97	5	3	0	—		
L. & N. E. Rly. 4% Debenture	78½	5	2	0	—		
L. & N. E. Rly. 4% Guaranteed	74	5	8	0	—		
L. & N. E. Rly 4% 1st Preference	67	5	18	0	—		
L. Mid. & Scot. Rly. 4% Debenture	81½	4	19	0	—		
L. Mid. & Scot. Rly. 4% Guaranteed	78	5	2	0	—		
L. Mid. & Scot. Rly. 4% Preference	74	5	8	0	—		
Southern Railway 4% Debenture	80½	5	0	0	—		
Southern Railway 5% Guaranteed	98	5	2	0	—		
Southern Railway 5% Preference	93	5	7	6	—		

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